

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 48. ARIZONA UNIFORM PLUMBING CODE COMMISSION

PREAMBLE

1.

<u>Section Affected</u> Article 1 R4-48-101 R4-48-102	<u>Rulemaking Action</u> New Article New Section New Section
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2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing Statute: A.R.S. § 41-619
Implementing Statute: A.R.S. § 41-619
3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Michael Goldwater, Director
Address: Arizona Registrar of Contractors
800 West Washington, 6th Floor
Phoenix, Arizona 85007
Telephone: (602) 542-1525, Ext. 7105
Fax: (602) 542-1536
4. An explanation of the rule, including the agency's reasons for initiating the rule:
The Arizona Uniform Plumbing Code Commission (commission) is adopting a state plumbing code by rule. The International Association of Plumbing and Mechanical Officials' (I.A.P.M.O.) 1994 Uniform Plumbing Code (U.P.C.), including its appendices and installation standards, is incorporated by reference as the state plumbing code.
5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
6. The preliminary summary of the economic, small business, and consumer impact:
The new rule will provide uniform plumbing standards statewide, providing greater certainty for the regulated community. Small businesses, consumers, and regulators will benefit from this certainty.
7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:
Name: Michael Goldwater, Director
Address: Arizona Registrar of Contractors
800 West Washington, 6th Floor
Phoenix, Arizona 85007
Telephone: (602) 542-1525, Ext. 7105

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Fax: (602) 542-1536

8. The time, place, and nature of the proceedings for the adoption of the rule:

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement may be submitted to the person listed in question #7 no later than 5 p.m., May 18, 1998.

An oral proceeding has been scheduled as follows:

Date: May 18, 1998

Time: 10 a.m.

Location: Registrar of Contractors

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

10. Incorporation by reference and their location in the rules:

I.A.P.M.O. 1994 Uniform Plumbing Code

11. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 48. ARIZONA UNIFORM PLUMBING CODE COMMISSION

ARTICLE 1. ARIZONA UNIFORM PLUMBING CODE

Section

R4-48-101. Definitions

R4-48-102. Arizona Uniform Plumbing Code

ARTICLE 1. ARIZONA UNIFORM PLUMBING CODE

R4-48-101. Definitions

The following definitions apply in this Article: "Person" has the meaning set forth in A.R.S. § 1-215.

R4-48-102. Arizona Uniform Plumbing Code

A. All persons shall comply with the International Association of Plumbing and Mechanical Officials' (I.A.P.M.O.) Uniform Plumbing Code (1994 Edition) which is incorporated by reference, including all appendices and installation standards, as the state plumbing code. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available from I.A.P.M.O. at 20001 Walnut Drive South, Walnut, CA, 91789-2825 and are on file with Arizona Uniform Plumbing Code Commission and the Office of the Secretary of State.

B. The Uniform Plumbing Code incorporated by subsection (A) is modified as follows:

1. Delete pages "1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14."
2. Sec. 202.0. Modify the definition of "Insanitary" by replacing numbered paragraphs (2) and (3) with the following:

"(2) Any opening in a drainage system, except where lawful, which is not provided with an approved liquid sealed trap.

(3) Any plumbing fixture or other waste discharging receptacle or device, which is not supplied with water sufficient to flush it and maintain it in a clean con-

dition except those specifically designed to function without water."

3. Sec. 202.0. Add a definition for "PEX" which reads: "PEX means Crosslinked Polyethylene"
4. Sec. 301.1.5 is added to read: "Existing Construction. This code does not require a change in any portion of a plumbing or drainage system or any other work regulated by this Code, in or on an existing building or lot, when the work was installed and is maintained in accordance with law in effect prior to the effective date of this Code, except when the Administrative Authority determines that the plumbing or drainage system or other work is dangerous, unsafe, insanitary, or a nuisance and a menace to life, health, or property."
5. Sec. 301.1.6 is added to read: "Health and Safety. Whenever compliance with all the provisions of this Code fails to eliminate or alleviate a nuisance, or any other dangerous or insanitary condition that may involve health or safety hazards, the owner or the owner's agent shall install additional plumbing and drainage facilities or make repairs or alterations ordered by the Administrative Authority."
6. Sec. 301.1.7 is added to read: "Changes in Building Occupancy. The owner of a plumbing system which is part of any building or structure undergoing a change in use or occupancy, as defined in the Uniform Building Code as published by the International Conference of Building Officials shall comply with all requirements of this Code that may be applicable to the new use or occupancy."
7. Sec. 301.1.8 is added to read: "Maintenance. The owner or the owner's agent shall maintain all plumbing systems, materials and appurtenances, both existing and new, and all parts of these items in proper operating condition. All devices or safeguards required by this Code shall be maintained according to the Code edition under which the device or safeguard was installed. To determine compliance with this section, the Administrative Authority may reinspect any plumbing system."

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8. Table 3-1. Add a new row to Table 3-1 which reads:

"PEX	Mechanical	1 inch (25.4mm) and smaller, 3 feet (0.9 m), 1-1/4 inch (31.8mm) and larger 4 feet (1.2m).	Base and each floor. Provide mid-story guides."
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9. Sec. 318.0 is added to read: "Inspections."
10. Sec. 318.1 is added to read "General. The Administrative authority shall inspect all plumbing systems for which a permit is required by this Code. No portion of any plumbing system shall be concealed until inspected and approved. Neither the Administrative Authority nor the State of Arizona is liable for any expense involved in the removal or replacement of material required to permit inspection. When the installation of a plumbing system is complete, an additional and final inspection shall be made. The owner or the owner's agent shall not connect a plumbing system regulated by this Code to the water, energy fuel supply, or the sewer system until authorized by the Administrative Authority."
11. Sec. 318.2 is added to read: "Scope. The Administrative Authority shall inspect all new plumbing work and those portions of existing systems that may be affected by new work or changes to insure compliance with all the requirements of this Code and to assure that the installation and construction of the plumbing system is consistent with approved plans."
12. Sec. 318.3 is added to read: "Covering or Using. A plumbing or drainage system, building sewer, private sewage disposal system or any part of such a system shall not be covered, concealed, or put into use until it has been tested, inspected, and accepted as prescribed in this Code."
13. Sec. 318.4 is added to read: "Uncovering. The owner or the owner's agent shall uncover any plumbing or drainage system, building sewer, private sewage disposal system or part thereof, which is installed, altered, repaired, covered, or concealed before being inspected, tested, and approved as prescribed in this Code after the Administrative Authority issues a notice to uncover the work to the responsible person."
14. Sec. 318.5 is added to read: "Other Inspections. In addition to the inspections required by this Code, the Administrative Authority may require other inspections of plumbing work to ascertain compliance with the provisions of this Code and other laws which are enforced by the Administrative Authority."
15. Sec. 318.6 is added to read: "Defective Systems. The administrative Authority shall use an air test to determine the sanitary condition of the drainage or plumbing system of any building premises when there is reason to believe that it is defective. In buildings or premises condemned by the proper Administrative Authority because of an insanitary condition of the plumbing system or plumbing system part, the alterations in the system shall conform to the requirements of this Code."
16. Sec. 318.7 is added to read: "Moved Structures. The Administrative Authority shall test all parts of a building that is moved from 1 foundation to another, or from 1 location to another, as prescribed in Section 318.2 for new work, except that walls or floors need not be removed during the test when other equivalent means of inspection acceptable to the Administrative Authority are provided."
17. Sec. 319.0 is added to read: "Testing of Systems. All plumbing systems shall be tested and approved as required by this Code or the Administrative Authority."
18. Sec. 319.1 is added to read: "Water Pipe Testing. Water piping shall be tested and approved as provided in Section 610.16."
19. Sec. 319.2 is added to read: "Test. Tests shall be conducted in the presence of the Administrative Authority or the Administrative Authority's duly appointed representative."
20. Sec. 319.3 is added to read: "Test and Inspection Waived. A test or inspection is not required where a plumbing system, or part of a plumbing system thereof, is set up for exhibition purposes and has no connection with a water or drainage system."
21. Sec. 319.4 is added to read: "Exceptions. In cases where it would be impractical to provide water or air tests, or for minor installations and repairs, the Administrative Authority may make inspections as deemed advisable in order to be assured that it has been performed in accordance with the intent of this Code."
22. Sec. 319.5 is added to read: "Tightness. Joints and connections in the plumbing system shall be gastight and watertight for the pressures required by the test."
23. Sec. 319.6 is added to read: "Corrections. The Administrative Authority shall issue any notices of correction or violation, post the notice at the site of the work and mail or deliver the notice to the owner or owner's agent. Failure to comply with a notice or order within 10 days of receipt is considered a violation of this Code."
24. Sec. 319.7 is added to read: "Retesting. If the Administrative Authority finds that the work does not pass the test, the owner or owner's agent shall make the necessary corrections and resubmit the work for test or inspection."
25. Sec. 319.8 is added to read: "Approval. Upon the satisfactory completion and final test of the plumbing system, The Administrative Authority shall issue a certificate of approval to the owner on demand."
26. Sec. 320.0 is added to read: "Test Gauges. Tests required by this Code, which are performed utilizing dial gauges, are limited to gauges with the following pressure graduations or incrementations."
27. Sec. 320.1 is added to read: "Required pressure tests of 10 pounds (69 kPa) or less shall be performed with gauges of 1/10 pound (0.7 kPa) incrementation or less."
28. Sec. 320.2 is added to read: "Required pressure tests exceeding 10 pounds (69 kPa) but less than 100 pounds (689 kPa) shall be performed with gauges of 1 pound (6.9kPa) incrementation or less."
29. Sec. 320.3 is added to read: "Required pressure tests exceeding 100 pounds (689kPa) shall be performed with gauges incremented for two (2) percent or less of the required test pressure."
30. Sec. 320.4 is added to read: "Test gauges shall have a pressure range not greater than twice the test pressure applied."
31. Sec. 321.0 is added to read: "Connection Approval."
32. Sec. 321.1 is added to read: "Energy Connections. A person shall not make a connection for which a permit is required from a source of energy or fuel to any plumb-

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- ing system or equipment regulated by this Code until approved by the Administrative Authority."
33. Sec. 321.2 is added to read: "Other Connections. No person shall make connection from any water supply line nor shall connect to any sewer system regulated by this Code and for which a permit is required until approved by the Administrative Authority."
34. Sec. 321.3 is added to read: "Temporary Connections. The Administrative Authority may authorize temporary connection of the plumbing equipment to the source of energy or fuel for the purpose of testing the equipment."
35. Sec. 402.1 is modified to read: "The maximum flow rates and quantities for all plumbing fixtures and fixture fittings shall be consistent with A. R. S. § 45-313."
36. Section 402.2 is deleted.
37. Sec. 501.0 is modified to read: "General. The regulations of this chapter shall govern the construction, location, and installation of all fuel burning and other water heaters heating potable water, together with all chimneys, vents, and their connectors. All design, construction, and workmanship shall be in conformity with accepted engineering practices and shall be of such character as to secure the results sought to be obtained by this Code. No water heater shall be hereinafter installed which does not comply in all respects with the type and model of each size thereof approved by the Administrative Authority. A list of generally accepted gas equipment standards is included in Table 14-1. An owner or owner's agent shall not place in service a water heater (boiler) which exceeds any of the following limitations until the vessel is separately inspected pursuant to A.R.S. Title 23, Chapter 2, Article 11."
- a. 120 gallon nominal water capacity.
- b. 160 PSI operating pressure.
- c. 210 degree f operating temperature.
- d. 200,000 BTU/h heat input."
38. Sec. 507.2 is modified to read: "In new construction, an owner or owner's agent shall provide all enclosed buildings with combustion air obtained from outside. In existing buildings of ordinary tightness in as infiltration is concerned, all or a portion of the combustion air for fuel-burning water heaters may be obtained from infiltration if the enclosure volume equals at least 50 cubic feet per 1000 Btu/h (4.831L/W) input of the water heater. Existing buildings of unusually tight construction shall also be provided with outside combustion air. A change in combustion air is not required when an existing fuel-burning water heater is replaced with a new water heater having the same or smaller BTU/h input capacity. When an existing fuel-burning water heater is replaced by a higher-capacity water heater, or when 1 or more additional fuel burning water heaters are installed in an existing building containing other fuel-burning appliances, the room or space shall be provided with combustion air as required for new construction."
39. Sec. 507.3.1. Add an exception to read: "Combustion air openings may be provided in an outside door provided:
- a. The door is not less than 2 feet 0 inches in width and 6 feet 8 inches in height; and
- b. The openings are spaced as far apart as possible or a full louvered door is provided; and
- c. The equipment room ceiling is not more than 16 inches above the top of the door."
40. Sec. 507.6 is added to read: "Liquified Petroleum Gas. All provisions of this chapter apply to combustion air for equipment using liquified petroleum gas. Exceptions:
- a. The bottom of the lower combustion air opening shall be located at or below the floor of the room containing the equipment.
- b. A combustion air duct when used, shall have the bottom installed level or with a downward slope, starting from a point at or below the equipment room floor and continuing to the outside of the structure. Where it terminates above the finish grade, a screened wire mesh shall cover the opening.
- c. Pockets or trapped sections are not permitted in any lower combustion air duct."
41. Table 5-1 is modified to read:

"Size of Combustion Air Openings or ducts" for gas-or-liquid Burning Water Heaters			
Column 1		Column 2	
Existing Buildings of Condition	Ordinary Tightness Size of Opening or Duct	New Buildings and Condition	Unusually Tight Construction Size of Opening or Duct
Appliance in unconfined ² space	May rely on infiltration alone.	Appliance in unconfined ² space: Obtain combustion air from outdoors or from space freely communicating with outdoors.	Provide 2 openings, minimum 50 sq. in. each opening. ³
Appliance in confined ⁴ space 1. All air from inside building	Provide two openings into enclosure each having 1 sq. in. (645mm ²) per 1,000 Btu/h input freely communicating with other unconfined interior spaces ³ . Minimum 100 Sq. In. (0.06m ²) each opening.	Appliance in confined ⁴ space: Obtain combustion air from outdoors or from space freely communicating with outdoors.	1. Provide two openings into enclosure, minimum 50 sq. in. each opening. ³
2. All air from outdoors: Obtain from outdoors or from space freely communicating with outdoors.	Use the methods listed for confined space as indicated in Column 2.		

¹ For location of opening, see Section 507.3

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². As defined in Chapter 2.

³. When the total input rating of appliances in enclosure exceeds 100,000 Btu/h the area of each opening into the enclosure shall be increased 1 sq. in. (645mm) for each 1,000 Btu/h over 100,000 Btu/h.

⁴. As defined in Section 202.0².

42. Sec. 517.6 is modified to read: "A venting system shall not terminate less than 3 feet (0.9m) above any forced air inlet or evaporative cooler located within 10 feet (3.0m) or less than 4 feet (1.2m) from any property line except a public way."

43. Sec. 601.1. Add exception to read: "Potable running water is not required for waterless urinals which have been approved by the Administrative Authority."

44. Sec. 603.4 is added to read: "Secondary Backflow protection. The following occupancies require Reduced Pressure Principle Backflow Prevention Assemblies to be installed as near as practical to the water service meter connection: Hospitals, surgical clinics, laboratories, morgues, mortuaries, veterinary hospitals, industrial occupancies, packing plants, slaughter houses, chemical plants, municipal waste treatment facilities, and construction water services. Note: Multiple water services which are interconnected onsite will be provided with not less than a Double Check Valve Assembly at each service connection."

45. Sec. 604.1 is modified to read: "Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron, galvanized steel, or other approved materials. Asbestos-cement, CPVC, PE, PEX, or PVC water pipe manufactured to recognized standards may be used for cold water distribution systems outside a building. CPVC, or PEX water pipe and tubing may be used for hot and cold water distribution systems within a building. All materials used in the water supply system, except valves and similar devices shall be of a like material, except where otherwise approved by the Administrative Authority."

46. Sec. 604.11 is added to read: "PEX. Cross-linked polyethylene (PEX) tubing will be marked with the appropriate standard designation(s) of the fitting system(s) for which the tubing has been listed or approved. PEX tubing will be installed with mechanical joints in compliance with the appropriate standard specification and the manufacturer's instructions."

47. Sec. 608.5 is modified to read: "All relief valves will be provided with a drain, not smaller than the relief valve outlet, of galvanized steel, hard drawn copper piping and fittings, CPVC, PB, or listed relief valve drain tube with fittings which will not reduce the internal bore of the pipe or tubing (straight lengths as opposed to coils) and will extend from the valve to the outside of the building with the end of the pipe not more than 2 feet (0.6m) nor less 6 inches (152.4mm) above the ground and pointing downward. Drains may terminate at other approved locations. The drain pipe shall not be trapped and the terminal end of the drain pipe shall not be threaded."

48. Sec. 610.15 is added to read: "Inspection. A water supply system or any portion of a water supply shall not be covered or concealed until it 1st has been tested, inspected, and approved by the Administrative Authority."

49. Sec. 610.16 is added to read: "Water Piping. "Upon completion of a section or of the entire hot and cold water supply system, it shall be tested and proved tight

under a water pressure not less than the working pressure under which it is to be used. The water used for tests shall be obtained from a potable source of supply. A 50 pound per square inch (344.5 kPa) air pressure may be substituted for the water test. In either method of test, the piping shall withstand the test without leaking for a period of not less than 15 minutes."

50. Sec. 707.4 is modified to read: "Each horizontal drainage pipe shall be provided with a cleanout at its upper terminal and each run of piping, which is more than 100 feet (30.4 m) in total developed length, shall be provided with a cleanout for each 100 feet (30.4 m), or fraction thereof, in length of the piping. EXCEPTIONS:

a. Cleanouts may be omitted on a horizontal drain line less than five (5) feet (1.5 m) in length unless such line is serving sinks or urinals."

b. Cleanouts may be omitted on any horizontal drainage pipe installed on a slope of seventy-two (72) degrees or less from the vertical angle (angle of one-fifth (1/5) bend)."

c. An approved type of 2-way cleanout fitting, installed inside the building wall near the connection between the building drain and building sewer or installed outside of a building at the lower end of a building drain and extended to grade, may be substituted for an upper terminal cleanout."

51. Delete Sections 712.4, 712.4.1, 712.4.2, 712.4.3, 712.4.4.

52. Sec. 713.4 is modified to read: "The public sewer may be considered as not being available only when so determined by the appropriate Administrative Authority (local, county, or state)."

53. Sec. 723.0 is modified to read: "Building sewers shall be tested by plugging the end of the building sewer at its points of connection with the public sewer or private sewage disposal system and completely filling the building sewer with water from the lowest to the highest point or by approved equivalent low pressure air test, or by such other test as may be prescribed by the Administrative Authority. The building sewer will be watertight at all points. EXCEPTION: Sewer tests may be waived at the discretion of the Administrative Authority."

54. Sec. 807.4 is modified to read: "The discharge line of a domestic dishwashing machine may be directly connected to the tailpiece of the sink strainer with a slip tee, or into the waste boss of a disposal unit installed in the sink. The high point of the discharge line shall be securely fastened as high as possible but not lower than 2 inches below the flood rim of the sink."

55. Sec. 1005.0 is modified to read: "Trap Seals. Each fixture trap may not have a liquid seal less than 2 inches (50.8mm) and not more than 4 inches (101.6mm) except where a deeper seal is found necessary by the Administrative Authority for special conditions. Traps shall be set true with respect to their liquid seals and, where necessary, they shall be protected from freezing."

56. Sec. 1007.0 is modified to read: "Trap Seal Protection. Floor drain or similar traps directly connected to the drainage system and subject to infrequent use shall be provided with an approved means of maintaining their water seals, except where deemed unnecessary for

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- safety or sanitation by the Administrative Authority. Automatic trap priming devices which are installed shall be accessible for maintenance."
57. Sec. 1007.1 is added to read: "Approved Means of Maintaining Trap Seals. Approved means of maintaining trap seals are as follows, but are not limited to:
- Listed Trap Seal Primer;
 - A hose bib; and
 - Drain line from untrapped lavatories to the tail-piece of fixture traps installed below the floor drain."

58. Sec. 1210.1 is modified to read: "All pipe used for the installation, extension, alteration, or repair of any gas piping shall be standard weight wrought iron or steel (galvanized or black) or yellow brass (containing not more than 75 percent copper) or approved corrugated stainless steel tubing systems. Approved PE pipe may be used in exterior buried piping systems."
59. Table 14-1. Add standards in alphabetical order listed under appropriate sections to read:

TABLE 14-1 PLUMBING MATERIAL STANDARDS

Materials and Products	ANSI	ASTM	FS	IAPMO	Other Standards	Footnote Remarks
"NON-METALLIC PIPE:						
Metal insert fittings utilizing a copper crimp ring for SDR9 crosslinked polyethylene (PEX) tubing.		F1807-97				
PLUMBING FIXTURES:						
Waterless Urinals	Z124.9			"C-3346"		

60. Appendix C is modified to read: "Appendix C of the 1994 Edition of the Uniform Plumbing Code shall be utilized by jurisdictions that have not adopted a building code which stipulates minimum plumbing facilities when establishing plumbing facility requirements. Each building shall be provided with sanitary facilities, including provisions for the persons with disabilities as prescribed by the department having jurisdiction. This Appendix, which provides a guideline for the minimum facilities for the various types of occupancies, (see Section 411.0 of the 1994 Edition of the Uniform Plumbing Code, Plumbing Fixtures Required) may be used in the absence of those requirements. Requirements for the handicapped, ANSI A117.1-1992, Accessible and Usable Buildings and facilities, may be used. The total occupant load shall be determined by minimum exiting requirements. The minimum number of fixtures shall be calculated at 50 percent male and 50 percent female, based on the total occupant load."
61. Appendix D1.1(c) is modified to read: "Roof drains, overflow drains, and rainwater piping installed within the building shall be tested in conformity with the provisions of this Code for testing drain, waste, and vent systems."
62. Appendix F Medical Gas Systems. Current language is deleted and replaced with "NFPA #99, Health Care Facilities (1996 Edition) which is incorporated by reference herein and on file with the Office of the Secretary of State. Incorporated materials do not include any later amendments or editions of the incorporated matter. The document is available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02169."
63. Appendix H 2 Design (a) is modified to read: "Interceptors shall be constructed to comply with the design approved by the Administrative Authority and shall have a minimum of 2 compartments with fittings designed for grease retention. Grease interceptors shall be constructed of solid durable materials, not subject to excessive corrosion or decay, and shall be watertight."

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TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) - ADMINISTRATION

PREAMBLE

1. Sections Affected

R9-22-1301
R9-22-1302
R9-22-1303
R9-22-1304
R9-22-1305
R9-22-1306
R9-22-1307

Rulemaking Action

New Section
New Section
New Section
New Section
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New Section
New Section

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R9-22-1308
R9-22-1309

New Section
New Section

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 36-2903.01(H)
Implementing statute: A.R.S. § 36-2903.01(B)(4)
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Cheri Tomlinson, Federal and State Policy Administrator
Address: AHCCCS Administration
801 East Jefferson, MD 4200
Phoenix, Arizona 85034
Telephone: (602) 417-4198
Fax: (602) 256-6756
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**
In response to a court order in *Perry vs. Kelly*, case CV 95-140 TUC RMB, a new Article has been added to 9 A.A.C. 22. The Order requires the Administration, contractors, or an ALTCS contractor who renders a decision to deny, reduce, suspend, or terminate services, to provide individuals with written notice and an opportunity to appeal. The Order also requires that services continue to be provided during the grievance and appeal process under certain circumstances. These and other requirements are detailed in 9 Sections (R9-22-1301 to R9-22-1309) in the Article.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**
It is anticipated that there will be a moderate impact on the Administration and contractors for administrative costs associated with complying with notification requirements to an individual when an adverse action is rendered. In August 1996, prior to the implementation of policy regarding the *Perry vs. Kelly* Order, a contractor who provides services to approximately 28 percent of the AHCCCS acute care population, estimated that the annual impact could be \$200,000-\$500,000 resulting from 20,000-45,000 denial letters. However, since October 11, 1996, when contractors were directed to implement the new policy, significant concerns have not been raised by contractors.

During the same period, there has been a limited impact upon the number of hearings the Administration has conducted as a result of *Perry vs. Kelly*-related appeals although this could change as individuals receive written notification of their opportunity to appeal.

AHCCCS members benefit from the changes because they must be notified in writing of the opportunity to appeal and also are provided continued services pending a decision on the appeal under certain circumstances when existing services are reduced or terminated.
7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Name: Cheri Tomlinson
Address: AHCCCS Administration
801 East Jefferson, MD 4200
Phoenix, Arizona 85034
Telephone: (602) 417-4198
Fax: (602) 256-6756
8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**
Date: May 19, 1998
Time: 9 a.m.
Location: AHCCCS Administration
801 East Jefferson, 2nd Floor, Hearing Room A
Phoenix, Arizona
Nature: Public Hearing

A person may submit written comments on the proposed rules. The written comments should be submitted no later than 5 p.m., May 21, 1998, to the person listed in question #7.

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9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
10. Incorporations by reference and their location in the rules:
None.
11. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) - ADMINISTRATION

ARTICLE 13. MEMBERS' RIGHTS AND RESPONSIBILITIES

Section

- R9-22-1301. General Intent and Definitions
R9-22-1302. Denial of a Request for a Service
R9-22-1303. Reduction, Suspension, or Termination of a Service
R9-22-1304. Content of Notice
R9-22-1305. Exceptions from an Advance Notice
R9-22-1306. Notice in a Case of Probable Fraud
R9-22-1307. Grievance and Appeal Process
R9-22-1308. Maintenance of Records
R9-22-1309. Member Handbook

ARTICLE 13. MEMBERS' RIGHTS AND RESPONSIBILITIES

R9-22-1301. General Intent and Definitions

- A.** This Article defines the notice and appeal process when a request for a service is denied or when services are reduced, suspended, or terminated and provides the opportunity for an expedited hearing.
- B.** Definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:
1. "Action" means a termination, suspension, or reduction of a covered service.
 2. "Contractor" means a health plan, ALTCS program contractor, the Arizona Department of Health Services, or Regional Behavioral Health Authorities for this Article.
 3. "Date of action" means the intended date on which a termination, suspension or reduction becomes effective.
 4. "Denial" means the decision not to provide authorization of a requested service.
 5. "Notice" means a written statement that meets the requirements specified in R9-22-1304.
 6. "Request for a hearing" means a clear expression by a member or an authorized representative that the member wants the opportunity to present the member's case to a reviewing authority.

R9-22-1302. Denial of a Request for a Service

The Administration or a contractor shall provide a member with a written notice no later than 3 business days from the date when authorization for a requested service is denied by the party giving notice.

R9-22-1303. Reduction, Suspension, or Termination of a Service

Except as permitted under R9-22-1305 and R9-22-1306, the Administration or a contractor shall provide a member with a written Notice of Intended Action at least 10 days prior to the date of the action by the Administration or a contractor when there is a

reduction, suspension, or termination of a service currently provided by the Administration or a contractor.

R9-22-1304. Content of Notice

A notice that is required under R9-22-1302 or R9-22-1303 of this Article, must contain the following:

1. A statement of what action the Administration or a contractor intends to take;
2. The succinct and specific reasons for the intended action;
3. The specific law or regulation that supports the action, or a change in federal or state law that requires an action;
4. An explanation of:
 - a. A member's right to request an evidentiary hearing; and
 - b. The circumstances under which a hearing will be granted, in cases of an action based on a change in the law;
5. An explanation of the circumstance under which a covered service will be continued if a hearing to appeal an action is requested for a:
 - a. Reduction,
 - b. Suspension, or
 - c. Termination of a service.

R9-22-1305. Exceptions from an Advance Notice

The Administration or a contractor may mail a notice of a reduction, suspension, or termination of a service not later than the date of action if the Administration or a contractor:

1. Has factual information that confirms the death of a member;
2. Receives a clear written statement signed by the member that:
 - a. Services are no longer wanted; or
 - b. Provides information which requires a reduction or termination of a service and indicates that the member understands that a reduction or termination of a service will be the result of providing that information;
3. A member that has been admitted to an institution which makes the member ineligible for further services;
4. Does not know the member's whereabouts and the post office returns mail directed to the member indicating no forwarding address;
5. Has established the fact that the member has been accepted for Medicaid services outside the state of Arizona;
6. Knows a change in the level of medical care has been prescribed by the member's primary care provider; or
7. Knows the notice involves an adverse determination made with regard to the preadmission screening requirements specified in A.R.S. § 36-2936 for an ALTCS member.

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R9-22-1306. Notice in a Case of Probable Fraud

The Administration or a contractor may shorten the period of advance notice to 5 days before the date of action if:

1. The facts indicate that action should be taken because of probable fraud by the member; and
2. The facts have been verified through secondary resources, if possible.

R9-22-1307. Grievance and Appeal Process

A. Time-frames. If the Administration or a contractor determines to deny a service that requires authorization or determines to reduce, suspend, or terminate existing services; and a member desires to appeal the determination and either requests continued services during the appeal process or requests an expedited hearing of a denial for authorization, a member must file a request for hearing:

1. No later than 10 business days from the date of personal delivery of the Notice of Intended Action to the member; or
2. No later than 15 business days from the postmark date, if mailed, of the Notice of Intended Action.

B. Expedited appeal. A hearing on an appeal that requests existing services be continued or a request for a hearing on an appeal from a denial for authorization may be expedited as provided by law or upon a showing of extraordinary circumstances or the possibility of irreparable harm.

C. Notice of hearing date. The parties to the appeal shall have actual notice of the hearing date provided to the member or the authorized representative and to all other parties.

D. Filing a grievance. If an expedited hearing of a denial is not requested or if an existing service is not requested to be continued, the member may file a grievance according to R9-22-804. The parties to the grievance shall be notified of the hearing date according to R9-22-801(F).

E. Responsibilities of the Administration or contractor. The Administration or a contractor shall provide the current level of an existing service during the appeal process, if an appeal

and request to continue services are timely filed as specified in subsection (A) by the member or the authorized representative.

F. Previously authorized service. If a member's primary care provider orders a service that has been previously authorized for the member, the Administration or a contractor may issue a written denial according to R9-22-1302, if the Administration or a contractor considers the request new and independent of any previous authorization. If the member's primary care provider asserts that the requested service or treatment is merely a necessary continuation of the previous authorization, and the member challenges the denial on this basis, then the service will be continued pending appeal, unless the parties reach some other agreement or the Administration or contractor believes the primary care provider's request endangers the member. The Administration or a contractor and the provider will reserve any dispute over reimbursement until a later date when the provider submits a claim.

G. Responsibility of a member. A member whose service is continued during an appeal process shall be financially liable for the service received if the decision to reduce, suspend, or terminate the member's service is upheld by the Director.

H. General provisions. All parties shall adhere to the requirements specified in R9-22-801 (A) through (E) and Sections (G) through (M).

R9-22-1308. Maintenance of Records

The party providing notice shall ensure that written records are maintained that written notification was given to the member, including the date it was provided.

R9-22-1309. Member Handbook

A contractor shall furnish each member with a handbook that clearly explains the member's right to file a grievance or appeal concerning any action that affects the member's receipt of medical services, as specified in contract.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM**

PREAMBLE

- | | |
|---|--|
| 1. <u>Sections Affected</u>
R9-28-1201 | <u>Rulemaking Action</u>
New Section |
| 2. <u>The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u>
Authorizing statute: A.R.S. § 36-2932(M)
Implementing statute: A.R.S. § 36-2932(I)(1) | |
| 3. <u>The name and address of agency personnel with whom persons may communicate regarding the rulemaking:</u>
Name: Cheri Tomlinson
Address: AHCCCS Administration
801 East Jefferson, MD 4200
Phoenix, Arizona 85034
Telephone: (602) 417-4198
Fax: (602) 256-6756 | |

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4. An explanation of the rule, including the agency's reasons for initiating the rule:

In response to a court order in *Perry vs. Kelly*, case CV 95-140 TUC RMB, a new Article has been added to 9 A.A.C. 28. The Order requires ALTCS contractors who render a decision to deny, reduce, suspend, or terminate services to provide individuals with written notice and an opportunity to appeal. The Order also requires contractors to continue to provide services during the grievance and appeal process under certain circumstances. The language in R9-28-1201 cross references the requirements in the 9 Sections in 9 A.A.C. 22, Article 13.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact:

By cross-referencing R9-28-1201 to 9 A.A.C. 22, Article 13, there is a moderate impact on the Administration and contractors for administrative costs associated with complying with notification requirements to an individual when an adverse action is rendered. On October 11, 1996, contractors were directed to implement a new policy reflecting the Court's requirements and significant concerns have not been raised by contractors. Since the policy took effect there has been a limited impact upon the number of hearings the Administration has conducted as a result of *Perry vs. Kelly*-related appeals but this could change as individuals receive written notification of their opportunity to appeal.

ALTCS members benefit from the change because they must be notified in writing of the opportunity to appeal and also are provided continued services pending a decision on the appeal under certain circumstances when existing services are reduced or terminated.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS Administration
801 East Jefferson, MD 4200
Phoenix, Arizona 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: May 19, 1998

Time: 9 a.m.

Location: AHCCCS Administration
801 East Jefferson, 2nd Floor, Hearing Room A
Phoenix, Arizona

Nature: Public Hearing

A person may submit written comments on the proposed rules. The written comments should be submitted no later than 5 p.m., May 21, 1998, to the person listed in question #7.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

10. Incorporations by reference and their location in the rules:

None.

11. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM**

**ARTICLE 12. MEMBERS' RIGHTS AND
RESPONSIBILITIES**

Section

R9-28-1201. Right's and Responsibilities

**ARTICLE 12. MEMBERS' RIGHTS AND
RESPONSIBILITIES**

R9-28-1201. Right's and Responsibilities

The Administration and its contractors shall meet the requirements as specified in A.A.C. R9-22-1301 through R9-22-1309.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 30. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) PREMIUM SHARING DEMONSTRATION PROJECT

PREAMBLE

1. **Sections Affected**

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R9-30-801	New Section
R9-30-802	New Section
R9-30-803	New Section
R9-30-804	New Section
R9-30-805	New Section
R9-30-806	New Section
R9-30-807	New Section
R9-30-808	New Section
R9-30-809	New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 36-2923; Laws 1997, Ch. 186 §§ 3 to 8, as amended by Laws 1997, 2nd Special Session, Ch. 186 §§ 3 and 4.

Implementing statute: A.R.S. § 36-2923; Laws 1997, Ch. 186 §§ 3 to 8, as amended by Laws 1997, 2nd Special Session, Ch. 186 §§ 3 and 4.
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: Arizona Health Care Cost Containment System
801 East Jefferson, MD 4200
Phoenix, Arizona 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

In response to a court order in *Perry vs. Kelly*, case CV 95-140 TUC RMB, a new Article has been added to 9 A.A.C. 30. The Order requires the Premium Sharing Administration (PSA) or a contractor who renders a decision to deny, reduce, suspend, or terminate services, to provide individuals with written notice and an opportunity to appeal. The Order also requires that services continue to be provided during the grievance and appeal process under certain circumstances. These and other requirements are detailed in 9 Sections (R9-30-801 to R9-30-809) in the Article.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**

A moderate impact on the PSA and contractors is anticipated for administrative costs associated with complying with notification requirements to an individual when an adverse action is rendered.

PSA members will benefit from the changes because they must be notified in writing of the opportunity to appeal and also are provided continued services pending a decision on the appeal under certain circumstances when existing services are reduced or terminated.
7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Cheri Tomlinson

Address: Arizona Health Care Cost Containment System
801 East Jefferson, MD 4200
Phoenix, Arizona 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: May 19, 1998
Time: 9 a.m.
Location: AHCCCS Administration
801 East Jefferson, 2nd Floor, Hearing Room A
Phoenix, Arizona
Nature: Public Hearing

A person may submit written comments on the proposed rules. The written comments should be submitted no later than 5 p.m., May 21, 1998, to the person listed in question #7.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
10. Incorporations by reference and their location in the rules:
None.
11. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 30. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
PREMIUM SHARING DEMONSTRATION PROJECT**

**ARTICLE 8. MEMBERS' RIGHTS AND
RESPONSIBILITIES**

Section

- R9-30-801. General Intent and Definitions
R9-30-802. Denial of a Request for a Service
R9-30-803. Reduction, Suspension or Termination of a Service
R9-30-804. Content of Notice
R9-30-805. Exceptions from an Advance Notice
R9-30-806. Notice in a Case of Probable Fraud
R9-30-807. Grievance and Appeal Process
R9-30-808. Maintenance of Records
R9-30-809. Member Handbook

**ARTICLE 8. MEMBERS' RIGHTS AND
RESPONSIBILITIES**

R9-30-801. General Intent and Definitions

- A.** This Article defines the notice and appeal process when a request for services is denied or when services are reduced, suspended, or terminated and provides the opportunity for an expedited hearing.
- B.** Definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:
1. "Action" means a termination, suspension, or reduction of a covered service.
 2. "Contractor" means a health plan, Arizona Department of Health Services or Regional Behavioral Health Authorities for this Article.
 3. "Date of action" means the intended date on which a termination, suspension or reduction becomes effective.
 4. "Denial" means the decision not to provide authorization of a requested service.
 5. "Notice" means a written statement that meets the requirements specified in R9-30-804.
 6. "Request for a hearing" means a clear expression by a Premium Share member or an authorized representative

that the Premium Share member wants the opportunity to present the Premium Share member's case to a reviewing authority.

R9-30-802. Denial of a Request for a Service

The PSA or a contractor shall provide a Premium Share member with a written notice no later than 3 business days from the date when authorization for a requested service is denied by the party giving notice.

R9-30-803. Reduction, Suspension or Termination of a Service

Except as permitted under R9-30-805 and R9-30-806, the PSA or a contractor shall provide a Premium Share member with a written Notice of Intended Action at least 10 days prior to the date of the action by the PSA or a contractor when there is a reduction, suspension, or termination of a service currently provided by the PSA or a contractor.

R9-30-804. Content of Notice

A notice that is required under R9-30-802 or R9-30-803 of this Article, must contain the following:

1. A statement of what action the PSA or a contractor intends to take;
2. The succinct and specific reasons for the intended action;
3. The specific law or regulation that supports the action, or a change in federal or state law that requires an action;
4. An explanation of:
 - a. A member's right to request an evidentiary hearing; and
 - b. The circumstances under which a hearing will be granted, in cases of an action based on a change in the law;
5. An explanation of the circumstance under which a covered service will be continued if a hearing to appeal an action is requested for a:
 - a. Reduction,
 - b. Suspension, or

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c. Termination of a service.

R9-30-805. Exceptions from an Advance Notice

The PSA or a contractor may mail a notice of a reduction, suspension, or termination of a service not later than the date of action if the PSA or a contractor:

1. Has factual information that confirms the death of a Premium Share member;
2. Receives a clear written statement signed by the Premium Share member that:
 - a. Services are no longer wanted; or
 - b. Provides information which requires a reduction or a termination of a service and indicates that the Premium Share member understands that a reduction or a termination of a service will be the result of providing that information;
3. A Premium Share member that has been admitted to an institution which makes the Premium Share member ineligible for further services;
4. Does not know the Premium Share member's whereabouts and the post office returns mail directed to the Premium Share member indicating no forwarding address;
5. Has established the fact that the Premium Share member has been accepted for Medicaid;
6. Knows a change in the level of medical care has been prescribed by the Premium Share member's primary care provider.

R9-30-806. Notice in a Case of Probable Fraud

The PSA or a contractor may shorten the period of advance notice to 5 days before the date of action if:

1. The facts indicate that action should be taken because of probable fraud by the Premium Share member; and
2. The facts have been verified through secondary resources, if possible.

R9-30-807. Grievance and Appeal Process

A. Time-frames. If the PSA or a contractor determines to deny a service that requires authorization or determines to reduce, suspend, or terminate existing services; and a member desires to appeal the determination and either requests continued services during the appeal process or requests an expedited hearing of a denial for authorization, a Premium Share member must file a request for hearing:

1. No later than 10 business days from the date of personal delivery of the Notice of Intended Action to the member; or
2. No later than 15 business days from the postmark date, if mailed, of the Notice of Intended Action.

B. Expedited appeal. A hearing on an appeal that requests existing services be continued or a request for a hearing on an appeal from a denial for authorization may be expedited as provided by law or upon a showing of extraordinary circumstances or the possibility of irreparable harm.

C. Notice of hearing date. The parties to the appeal shall have actual notice of the hearing date provided to the Premium Share member or the authorized representative and to all other parties.

D. Filing a grievance. If an expedited hearing of a denial is not requested or if an existing service is not requested to be continued, the Premium Share member may file a grievance according to A.A.C. R9-22-804. The parties to the grievance shall be notified of the hearing date according to A.A.C. R9-22-801(F).

E. Responsibilities of the PSA or contractor. The PSA or a contractor shall provide the current level of an existing service during the appeal process, if an appeal and request to continue services are timely filed as specified in subsection (A) by the Premium Share member or the authorized representative.

F. Previously authorized service. If a Premium Share member's primary care provider orders a service that has been previously authorized for the Premium Share member, the PSA or a contractor may issue a written denial according to R9-30-1302, if the PSA or a contractor considers the request new and independent of any previous authorization. If the Premium Share member's primary care provider asserts that the requested service or treatment is merely a necessary continuation of the previous authorization, and the Premium Share member challenges the denial on this basis, then the service will be continued pending appeal, unless the parties reach some other agreement or the PSA or contractor believes the primary care provider's request endangers the Premium Share member. The PSA or a contractor and the provider will reserve any dispute over reimbursement until a later date when the provider submits a claim.

G. Responsibility of a Premium Share member. A Premium Share member whose service is continued during an appeal process shall be financially liable for the service received if the decision to reduce, suspend, or terminate the Premium Share member's service is upheld by the Director.

H. General provisions. All parties shall adhere to the requirements specified in A.A.C. R9-22-801(A) through (E) and subsections (G) through (M).

R9-30-808. Maintenance of Records

The party providing notice shall ensure that written records are maintained that written notification was given to the Premium Share member, including the date it was provided.

R9-30-809. Member Handbook

A contractor shall furnish each Premium Share member with a handbook that clearly explains the Premium Share member's right to file a grievance or appeal concerning any action that affects the Premium Share member's receipt of medical services, as specified in contract.

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TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. THE INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| Article 7 | New Article |
| R20-5-701 | New Section |
| R20-5-702 | New Section |
| R20-5-703 | New Section |
| R20-5-704 | New Section |
| R20-5-705 | New Section |
| R20-5-706 | New Section |
| R20-5-707 | New Section |
| R20-5-708 | New Section |
| R20-5-709 | New Section |
| R20-5-710 | New Section |
| R20-5-711 | New Section |
| R20-5-712 | New Section |
| R20-5-713 | New Section |
| R20-5-714 | New Section |
| R20-5-715 | New Section |
| R20-5-716 | New Section |
| R20-5-717 | New Section |
| R20-5-718 | New Section |
| R20-5-719 | New Section |
| R20-5-720 | New Section |
| R20-5-721 | New Section |
| R20-5-722 | New Section |
| R20-5-723 | New Section |
| R20-5-724 | New Section |
| R20-5-725 | New Section |
| R20-5-726 | New Section |
| R20-5-727 | New Section |
| R20-5-728 | New Section |
| R20-5-729 | New Section |
| R20-5-730 | New Section |
| R20-5-731 | New Section |
| R20-5-732 | New Section |
| R20-5-733 | New Section |
| R20-5-734 | New Section |
| R20-5-735 | New Section |
| R20-5-736 | New Section |
| R20-5-737 | New Section |
| R20-5-738 | New Section |
| R20-5-739 | New Section |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing Statute: A.R.S. § 23-961.01
Implementing Statute: A.R.S. §§ 23-961 and 23-961.01
- 3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Douglas R. Newton, Division of Administration
Address: Industrial Commission of Arizona
800 West Washington
Phoenix, Arizona 85007
Telephone: (602) 542-5380
Fax: (602) 542-3070

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4. An explanation of the rule, including the agency's reason for initiating the rule:

In 1997, the Arizona Legislature enacted A.R.S. § 23-961.01 which permits 2 or more employers, who meet the criteria of § 23-961.01, to form workers' compensation pools. Workers' compensation pools organized under § 23-961.01 may apply to the Industrial Commission of Arizona for authority to self-insure for workers' compensation. Section G of A.R.S. § 23-961.01 specifically directs the Industrial Commission to promulgate rules to safeguard the solvency of organized pools under § 23-961.01 and to guarantee that injured workers receive benefits as required under the Arizona Workers' Compensation Act. The Legislature mandated that the rules include matters pertaining to classification and rating, loss reserves, investments, financial security, minimum and combined premiums, combined net worth, specific and aggregate excess insurance, pool homogeneity, and assessments necessary for participation in and administration of the workers' compensation system.

In response to A.R.S. § 23-961.01, the Industrial Commission proposes to adopt Article 7 to 20 A.A.C. 5. Article 7 includes the following new Sections addressing each of the matters specifically listed in A.R.S. § 23-961.01 and are for the purpose of safeguarding the solvency of the pools and guaranteeing that injured workers receive benefits as required under the Arizona Workers' Compensation Act:

Section 701 lists definitions applicable to Article 7;

Section 702 states how time shall be computed under Article 7;

Section 703 lists the forms the Industrial Commission shall require a pool to use;

Section 704 states the general rule that Industrial Commission approval is required before a workers' compensation pool may act as a self-insured employer for workers' compensation;

Section 705 states the length of time a certificate of authority is valid upon approval of an initial or renewal application to self-insure;

Section 706 states the time-frames for processing initial and renewal applications for authority to self-insure for workers' compensation;

Section 707 lists the requirements for a complete initial application for authorization to self-insure;

Section 708 lists the requirements for a complete renewal application for authority to self-insure;

Section 709 states the combined net worth required for the members of a pool.

Section 710 lists the criteria the Industrial Commission shall use to determine whether members of a workers' compensation pool belong to similar industries as required by A.R.S. § 23-961.01;

Section 711 interprets the phrase "joint and several liability" and states the language which shall be included in the joint and several liability clause required under A.R.S. § 23-961.01;

Section 712 requires a pool obtain and maintain a fidelity policy. This Section also lists the persons required to be covered by the policy, the minimum amount of coverage required under the policy, and the requirement to provide the Industrial Commission proof of fidelity coverage;

Section 713 requires a pool to obtain and maintain a guaranty bond and describes the procedure to determine the amount of the bond. This Section also describes who has authority to issue a guaranty bond, the duration of the bond, what the Industrial Commission will accept in lieu of a guaranty bond, and the documents required as proof of compliance with this Section;

Section 714 describes the requirements for filing securities with the Arizona State Treasurer and the Industrial Commission's authority with respect to the securities;

Section 715 states the requirements for obtaining and maintaining specific and aggregate excess insurance. This Section also includes minimum policy and retention amounts, payments that shall be applied to retention amounts, and cancellation and non-renewal requirements;

Section 716 states the rates, code classifications, and the penalty rate that may be used by a pool;

Section 717 states requirements pertaining to premiums charged by a pool, the formulas a pool shall use to calculate premiums and experience modification rates for its members, the schedule required for payment of premiums, and the discounts and refunds permitted;

Section 718 lists the requirements for a financial statement including the frequency of the statement, the contents of the statement, who may prepare the statement, the reports required to accompany the statement, and when the statement is required to be filed with the Industrial Commission;

Section 719 states the requirements applicable to a board of trustees, including minimum duties and responsibilities of the board, delegation of duties, and prohibitions;

Section 720 lists prohibitions of an administrator and provisions relating to disclosure of actual or perceived financial or employment interests of an administrator;

Section 721 describes the procedure for admission of employers into a workers compensation pool and includes the process

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under which a pool may obtain authority from the Industrial Commission to admit members to a pool without prior Industrial Commission approval;

Section 722 describes circumstances and procedure under which membership in a pool may be terminated or canceled;

Section 723 states the requirements for a trustee fund and a loss fund;

Section 724 states the restrictions on investments activities of a pool;

Section 725 lists the requirements applicable to a service company, including qualifications of a service company, language required in a contract between a service company and pool, and requirements applicable to the transfer of claims processing from 1 service company to another;

Section 726 describes the procedure under which a pool may apply to the Industrial Commission for authority to process the workers' compensation claims of the pool's members. This Section also includes claims processing requirements applicable to a pool;

Section 727 describes the requirements for loss control and underwriting programs of pool;

Section 728 describes the procedures to be followed when a pool has insufficient assets or funds, including the requirements of a plan of abatement;

Section 729 lists the requirement that a pool maintain an office in Arizona, recordkeeping requirements and records subject to review by the Industrial Commission;

Section 730 describes the circumstances under which the Industrial Commission may request additional financial records from a pool or order an independent examination of records;

Section 731 describes the liability of members of a pool upon assignment of workers' compensation claims to the State Compensation Fund under A.R.S. § 23-966 due to bankruptcy or inability of a pool to process and pay workers' compensation claims;

Section 732 describes the procedure for calculation and payment of taxes under A.R.S. § 23-961 and A.R.S. § 23-1065;

Section 733 describes the review process of initial and renewal applications for authority to self-insure by the Division;

Section 734 describes the process by which the Industrial Commission issues a decision on an initial or renewal application to self-insure;

Section 735 describes the right to request a hearing after an administrative decision is issued by the Commission and when the request shall be filed;

Section 736 describes hearing rights and procedures;

Section 737 describes the process by which the Industrial Commission issues a decision upon hearing;

Section 738 describes the right to request review of an Industrial Commission decision upon hearing and when the request shall be filed; and

Section 739 describes the causes and procedure for revocation of authority to self-insure.

5. A showing of good cause why the rule is necessary to promote statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

The proposed rule additions do not diminish a previous grant of authority of a political subdivision of this state.

6. The preliminary summary of the economic, small business, and consumer impact:

In 1997, the Arizona Legislature added A.R.S. § 23-961.01 which permits 2 or more employers meeting the criteria set forth in A.R.S. § 23-961.01 to enter into contracts to establish workers' compensation pools to provide for the payment and administration of workers' compensation claims. The proposed rules implement A.R.S. § 23-961.01. The overall economic impact of the proposed rulemaking is positive in that the proposed rules are designed to safeguard the solvency of pools organized under A.R.S. § 23-961.01 and to ensure that injured workers receive the benefits to which they are entitled under the Arizona Workers' Compensation Act.

The proposed rulemaking favorably impacts employers who are members of trade associations, 3rd-party service companies, and persons or entities that are hired as administrators for the pools. In Arizona, there are approximately 160 existing associations comprising an unknown number of employers. There are approximately 100 3rd-party service companies. It is not known how many associations will take advantage of the option afforded by A.R.S. § 23-961.01.

In discussions with other states who have experience with self-insured pools, the states have explained that while there are initial costs to organize a pool, members of a pool can experience savings in the 1st year of operation and thereafter if financial safeguards, acceptable loss control and underwriting programs, and guidelines for proper claims administration and regulatory oversight are established. These savings result from a pool having less overhead costs and greater control in processing and administering workers' compensation claims, than with a workers' compensation insurance carrier. As a result of the proposed rulemaking, it is believed that pools will be able to effectively and efficiently process and pay workers' compensation claims.

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On the average, it is expected that members of a new pool will save approximately 5-9% in premium costs in the 1st year. Members of an established pool have the potential to save 12% in premium costs.

The impact of the proposed rulemaking on 3rd-party service companies and administrators is believed to be positive. The rulemaking does not negatively affect the increase in business that such companies and persons are likely to experience as a result of the enactment of A.R.S. § 23-961.01.

If trade associations take advantage of the option afforded by A.R.S. § 23-961.01, it is likely that workers' compensation insurance companies will experience a decline in business. The impact, however, is due to enactment of the statute, not the proposed rulemaking. The proposed rulemaking does not apply to workers' compensation insurance carriers. Therefore, there is no direct impact to workers' compensation carriers as a result of the proposed rulemaking. Likewise, the proposed rulemaking requires workers' compensation pools to process and pay workers' compensation claims as required under the Arizona Workers' Compensation Act. In this regard, the proposed rulemaking requires from a pool, that which is required of a workers' compensation insurance carrier. Therefore, there is no indirect impact to workers' compensation carriers as a result of the proposed rulemaking.

Political subdivisions are not affected by the proposed rulemaking because the proposed rules do not cover political subdivisions and these entities already have the authority to form pools to self-insure for workers' compensation.

It is expected that the Industrial Commission will experience an impact as a result of the proposed rulemaking. The Industrial Commission has asked for additional personnel through the appropriations process to handle the expected increase in workload. The Industrial Commission will incur costs associated with the rulemaking process.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Douglas R. Newton, Division of Administration
Address: Industrial Commission of Arizona
800 West Washington Street, Suite 303
Phoenix, Arizona 85007
Telephone: (602) 542-5380
Fax: (602) 542-3070

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: May 21, 1998
Time: 9:30 a.m.
Location: Industrial Commission of Arizona, 1st Floor Auditorium
800 West Washington Street
Phoenix, Arizona 85007
Nature: Oral and written comments will be accepted on or before the date set forth in this paragraph.

9. Any other matters prescribed by statute that are applicable to the specific rule or class of rules:

None.

10. Incorporation by reference and their location in the rules:

None.

11. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. THE INDUSTRIAL COMMISSION OF ARIZONA

**ARTICLE 7. SELF-INSURANCE REQUIREMENTS FOR
WORKERS' COMPENSATION POOLS ORGANIZED
UNDER A.R.S. § 23-961.01**

Section

R20-5-701. Definitions
R20-5-702. Computation of Time
R20-5-703. Forms Prescribed by the Commission
R20-5-704. Requirement for Commission Approval to Act as Self-Insurer
R20-5-705. Duration of Certificate of Approval
R20-5-706. Time-frames for Processing Initial and Renewal

R20-5-707. Application for Authority to Self-Insure
R20-5-708. Filing Requirements for Initial Application for Self-Insurance License
R20-5-709. Filing Requirements for Renewal Application for Self-Insurance License
R20-5-710. Combined Net Worth
R20-5-711. Similar Industry Requirement
R20-5-712. Joint and Several Liability of Members
R20-5-713. Fidelity Policy
R20-5-714. Guaranty Bond
Securities deposited with the Arizona State Treasurer

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- R20-5-715. Aggregate and Specific Excess Insurance Policies
R20-5-716. Rates and Code Classifications; Penalty Rate
R20-5-717. Gross Annual Premium of Pool; Calculation and Payment of Workers' Compensation Premiums; Discounts; Refunds
R20-5-718. Financial Statements
R20-5-719. Board of Trustees
R20-5-720. Administrator; Prohibitions; Disclosure of Interest
R20-5-721. Admission of Employers into an Existing Workers' Compensation Pool
R20-5-722. Termination by a Member in a Pool; Cancellation of Membership by a Pool; Final Accounting
R20-5-723. Trustee Fund; Loss Fund
R20-5-724. Investment Activity of a Pool
R20-5-725. Service Companies; Qualifications; Contracts; Transfer of Claims
R20-5-726. Processing of Workers' Compensation Claims by a Pool
R20-5-727. Loss Control and Underwriting Programs
R20-5-728. Insufficient Assets or Funds of a Pool; Plans of Abatement; Notice of Bankruptcy
R20-5-729. Arizona Office; Recordkeeping; Records Available for Review
R20-5-730. Order for Additional Financial Information; Examination of Accounts and Records by Commission
R20-5-731. Assignment of Claims Under A.R.S. § 23-966; Obligation of Member to Reimburse the Commission
R20-5-732. Calculation and Payment of Taxes under A.R.S. § 23-961 and A.R.S. § 23-1065
R20-5-733. Review of Initial and Renewal Applications for Authority to Self-insure by the Division
R20-5-734. Decision by the Commission on Initial or Renewal Applications for Authority to Self-insure
R20-5-735. Right to Request a Hearing
R20-5-736. Hearing Rights and Procedures
R20-5-737. Decision Upon Hearing by Commission
R20-5-738. Request for Review
R20-5-739. Revocation of Authority to Self-Insure

ARTICLE 7. SELF-INSURANCE REQUIREMENTS FOR WORKERS' COMPENSATION POOLS ORGANIZED UNDER A.R.S. § 23-961.01

R20-5-701. Definitions.

In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

- "Administrator" means an individual or organization chosen by a Board to manage the daily operations of a pool.
"Applicant" means a worker compensation pool organized under A.R.S. § 23-961.01 that has filed an initial application for authority to self-insure.
"Board of trustees" or "board" means a body of individuals that manage all operations of a worker compensation pool.
"Cash flow ratio" means a numerical relationship that reflects an ability to meet current financial obligations out of cash flow and is calculated by dividing funds received from operations by current liabilities.
"Certificate of authority" means a document issued by the Commission granting a pool authority to be self-insured for purposes of workers' compensation.
"Claim" means a worker compensation claim.
"Code classification" means a number assigned by an approved rating organization that classifies employees.

"Current ratio" means a numerical relationship that reflects an ability to pay current obligations and is calculated by dividing current assets by current liabilities.

"Debt status ratio" means a numerical relationship that reflects the proportion of funds supplied internally relative to the funds supplied by creditors and is calculated by dividing net worth by total liabilities.

"Division" means the Administration Division of the Industrial Commission of Arizona.

"Excess insurance carrier" means an insurance carrier authorized by the Arizona Department of Insurance to issue policies of excess insurance coverage and casualty insurance coverage to a self-insured.

"Experience modification rate" means a ratio comparing actual losses to expected losses based on a formula determined by an approved rating organization and 3 years of loss information.

"Financial rating organization" means a nationally recognized organization such as Standard & Poor's or Moody's that evaluates and rates securities.

"Fiscal year" means a 12 month cycle that begins from the effective date of authority to self-insure.

"Loss fund" means an account from which money is used to pay all workers' compensation expenses including current and contingent liabilities of a worker's compensation claim of a pool.

"Member" means an employer described in A.R.S. § 23-961.01 that has joined with other employers to form a pool.

"NCCI" means the National Council on Compensation Insurance.

"Pool" means a workers' compensation group organized under A.R.S. § 23-961.01.

"Profitability ratio" means a numerical relationship that represents the return on assets and the efficiency of assets and is calculated by dividing profit before taxes by total assets, multiplied by 100.

"Quick ratio" means a numerical relationship that represents the degree to which liabilities are covered by the most liquid current assets and is calculated by dividing cash and equivalents, plus trade receivables, by current liabilities.

"Rate" means an assignment of a code classification based on risk as established by a rating organization and approved by the Arizona Department of Insurance.

"Rating organization" means an entity that meets the requirements of A.R.S. § 20-363(F) and is approved by the Arizona Department of Insurance to establish rates, codes, and formulas used to calculate worker compensation premiums.

"Service company" means an entity or organization that is contracted by a pool to receive, process, and pay workers' compensation claims for a pool.

"Trustee fund" means an account into which premiums, investment proceeds, and other revenues are deposited and are used to cover all administrative or operational expenses of a pool.

"Working capital ratio" means a numerical relationship that measures the sufficiency of working capital to support sales and is calculated by dividing working capital by sales.

R20-5-702. Computation of Time

- A. In computing any period of time prescribed or allowed by this Article, the Commission shall not include the day of the act or event from which the period of time begins to run. The

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Commission shall include the last day of the period computed unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, the Commission shall exclude intermediate Saturdays, Sundays, and legal holidays in the computation of time.

- B.** Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

R20-5-703. Forms Prescribed by the Commission

The following forms are available upon request from the Commission and contain requests for the information listed in each subsection.

1. Initial Application for Authority to Self-Insure:

- a. Name of the pool;
- b. Address and telephone number of the pool's principal office;
- c. Effective date of formation of the pool;
- d. Name and address of each member of the pool;
- e. Two digit standard industrial classification code for each member of the pool;
- f. Name and address of the industry, trade, or professional organization to which members of the pool belong;
- g. Effective date of formation of the industry, trade, or professional organization to which members of the pool belong;
- h. Type of business in which members are engaged and length of time in business for each member;
- i. Explanation of how businesses of members are the same or similar;
- j. Amount of workers' compensation insurance premiums paid by each member in the preceding year;
- k. Names and addresses of the board of trustees;
- l. Name, address, and telephone number of the administrator appointed by the board of trustees;
- m. Name, address, and telephone number of the service company, if applicable;
- n. Names, titles, addresses, and telephone numbers of the persons in charge of the loss control and underwriting programs;
- o. Premium tax plan selection;
- p. Authorized signature and title;
- q. Statement that all information and assertions contained in the application and the documents accompanying the application are factually correct and true; and
- r. Date of execution.

2. Renewal Application:

- a. Name of the pool;
- b. Address and telephone number of the pool's principal office;
- c. Name and address of each member of the pool and the effective date of membership;
- d. Renewal date of the pool;
- e. Effective date of initial authority to self-insure;
- f. Total number of member employees covered by the pool;
- g. Total payroll of the pool for the last fiscal year;
- h. Name, address, and telephone number of the administrator;
- i. Name, address, and telephone number of the service company, if applicable;

- j. Name, address, and telephone number of the excess insurance carrier;
- k. Name and address of the companies providing guaranty bond and fidelity policy;
- l. Name and address of individuals serving on the board of trustees;
- m. Names, titles, addresses, and telephone numbers of persons in charge of loss control and underwriting programs;
- n. Authorized signature and title;
- o. Statement that all information and assertions contained in the renewal application and the documents accompanying the renewal application are factually correct and true; and
- p. Date of execution.

3. Self-Insurance Guaranty Bond Form:

- a. Pool identification;
- b. Names of fidelity and surety insurance companies;
- c. Description of the bond, including the amount and conditions of the bond obligations and liability of surety;
- d. Statement regarding the responsibility for fees and costs associated with the collection of the bond and the responsibility for payment of any award or judgment against the surety;
- e. Authorized signatures and titles by pool, surety, and agent; and
- f. Date of execution.

4. Option Election Form:

- a. Calculation and selection of type of guaranty bond and securities;
- b. Description of incurred liability and anticipated future liability (compensation and medical) on all open cases for the preceding 4 years and the current year;
- c. Authorized signature and title;
- d. Statement that all information and assertions contained in the form are factually correct and true; and
- e. Date of execution.

5. Self-Insured Payroll Report:

- a. Description of the payroll (classification codes, methods and types of pay);
- b. Amount paid in the preceding calendar year;
- c. Authorized signature and title;
- d. Statement that all information and assertions contained in the report are factually correct and true; and
- e. Date of execution.

6. Self-Insured Medical Report:

- a. Description of costs relating to industrial injuries;
- b. Reinsurance premiums paid;
- c. Total expenditures for workers' compensation and occupational disease claims;
- d. Authorized signature and title;
- e. Statement that all information and assertions contained in the report are factually correct and true; and
- f. Date of execution.

7. Self-Insured Injury Report:

- a. Description of specific information for the current year and 3 preceding years for each injury requiring payment in excess of \$5000 which includes accumulated amount paid and reserved or each claim in excess of \$5,000;

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- b. Description of combined injuries for the current year and 3 preceding years if individual injury required payment of less than \$5,000;
- c. Authorized signature, title, and telephone number;
- d. Statement that all information and assertions contained in the report are factually correct and true; and
- e. Date of execution.
- 8. Quarterly Tax Payment Form:
 - a. Name and address of the pool;
 - b. Description and calculation of the quarterly tax and designation of the applicable quarter;
 - c. Amount of annual tax paid in the previous calendar year; amount of the quarterly tax paid adjusted for change in the tax rate;
 - d. Description and calculation of the penalty due;
 - e. Authorized signature, title and telephone number;
 - f. Statement that all information and assertions contained in the form are factually correct and true; and
 - g. Date of execution.
- 9. Application to Add Members to Self-insured Pool:
 - a. Name of the pool and name of each member to be added to the pool, including if applicable, addresses, corporation, subsidiary, partnership, and trust information;
 - b. Nature and years in business of the members to be added;
 - c. History of business in Arizona and elsewhere for each member to be added;
 - d. Payroll data for each member to be added;
 - e. Work force data for each member to be added;
 - f. Financial data for each member to be added;
 - g. Insurance data for each member to be added;
 - h. Two digit standard industrial classification code for each member of the pool;
 - i. Workers' compensation claims, loss and performance history for each member to be added;
 - j. Authorization by resolution approving addition of each new member;
 - k. Authorized signature and title;
 - l. Statement that all information and assertions contained in the application are factually correct and true; and
 - m. Date of execution.
- 10. Notice Confirming Addition of Member to Pool:
 - a. Name of the pool;
 - b. Name and address of the new member;
 - c. Effective date of membership;
 - d. Rate and code classification to be applied to new member;
 - e. Standard industrial classification code for new member;
 - f. Authorized signature and title;
 - g. Statement that all information and assertions contained in the notice are factually correct and true; and
 - h. Date of execution.
- 11. Notice of Termination of Membership:
 - a. Pool identification;
 - b. Effective date of termination;
 - c. Name and address of the member to be terminated, identified as follows:
 - i. All names and addresses of every location used by the member;
 - ii. If the member is a partnership, the names and addresses of all the partners;
 - iii. If the member is a corporation doing business under a number of divisions, the notice shall state the names of all the divisions of the corporation; and
 - iv. If a member changes names, both the new and former names.
 - d. Authorized signature, title and telephone number;
 - e. Statement that all information and assertions contained in the notice are factually correct and true; and
 - f. Date of execution.

R20-5-704. Requirement for Commission Approval to Act as Self-Insurer

No pool has authority to act as a self-insurer under A.R.S. §§ 23-961 and 23-961.01 unless the pool receives and maintains a certificate of authority from the Commission.

R20-5-705. Duration of Certificate of Approval

Except as provided in this subsection, a certificate of approval is valid for 1 fiscal year. The Commission may renew the certificate on an annual basis upon application by a pool. If a pool files a timely and complete renewal application under this Article, the Commission shall consider the existing certificate of authority valid, subject to compliance with A.R.S. § 23-901 et seq. and this Article, until a new certificate of authority is issued or an order of the Commission refusing to renew becomes final.

R20-5-706. Time-frames for Processing Initial and Renewal Application for Authority to Self-Insure

A. Administrative completeness review.

1. Initial application. The Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform an applicant by written notice whether the application is deemed complete or deficient within the time-frame provided in this subsection. The Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient.
2. Renewal application. The Division shall review a renewal application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform a pool by written notice whether the application is deemed complete or deficient within the time-frame provided in this subsection. The Division shall deem the application withdrawn if a pool fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient, except that failure to file the financial and actuarial reports required under R20-5-708(C) shall not cause the Division to deem the application withdrawn if a pool files the financial and actuarial reports with the Division within 120 days after the end of the pool's fiscal year.

B. Substantive review.

1. Initial application. Within 70 days after the Division deems an initial application complete, the Commission shall determine whether an initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961.01 and this Article and shall issue an order granting or denying authority to self-insure.

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2. Renewal application. Within 40 days after the Division deems a renewal application complete, the Commission shall determine whether a renewal application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961.01 and this Article and shall issue an order granting or denying authority to self-insure.

C. Overall review.

1. Initial application. The overall review period shall be 90 days, unless extended under A.R.S. § 41-1072 et seq.
2. Renewal application. The overall review period shall be 60 days, unless extended under A.R.S. § 41-1072 et seq.

R20-5-707. Filing Requirements for Initial Application for Self-Insurance License

A. Initial application for authorization to self-insure.

1. An application for authority to self-insure shall be completed on forms approved by the Commission.
2. An application for authority to self-insure shall be filed with the Division. An application is considered filed when it is received at the office of the Division.
3. An application shall be typewritten or written in ink in legible text.
4. The administrator of a pool shall sign the application. The signature of the administrator shall be notarized.
5. The administrator shall verify, in writing, that the information contained in and submitted with the application is true and correct.

B. The Commission shall deem an initial application for authority to self-insure complete if an applicant provides the following information with the initial application:

1. A copy of the contract required under A.R.S. § 23-961.01 establishing the pool;
2. A copy of the articles of incorporation establishing the pool, if applicable;
3. A copy of the trust agreement establishing the pool, if applicable;
4. A copy of the bylaws governing the operations of the pool;
5. An original, signed application to join the pool from every employer receiving approval from the board to join the pool;
6. Resolution from the board approving employers for membership in the pool;
7. A certified copy of an audited financial statement or an internally reviewed and signed financial statement for each member for the most current and prior 2 years that, considered collectively, demonstrate that the combined net worth of the members at the time of the initial application is not less than \$1,000,000;
8. Preparation of the following financial ratios of each member:
 - a. Cash flow ratio;
 - b. Current ratio;
 - c. Debt status ratio;
 - d. Profitability ratio;
 - e. Quick ratio; and
 - f. Working capital ratio.
9. Detailed description of the loss control program required under R20-5-727, including a description of training programs and safety requirements implemented or to be implemented;
10. Written statement from each member with an experience modification rate greater than 1.10 describing the causes of the member's experience modification rate and outlining remedial measures the member has taken

and will take to lower the member's experience modification rate;

11. Original, signed fidelity policy, or a certified copy, that meets the requirements of R20-5-712;
12. Original, signed guaranty bond, securities, or letter of credit that meets the requirements of R20-5-713;
13. Completed and signed Option Election Form and Self-Insurance Bond Form;
14. Copy of excess insurance policies issued by an authorized carrier that meets the requirements of R20-5-715;
15. Copy of the signed agreement or contract of hire between a board and the administrator of the pool;
16. Designation of a service company and a copy of the signed agreement between the service company and pool that meets the requirements of R20-5-725 or a written statement from the pool requesting authorization to process claims in-house with supporting documentation required under R20-5-726;
17. List of all rates by code classification to be used by the pool to calculate premiums;
18. Statement showing how premiums shall be calculated for members;
19. Detailed description of the underwriting program required under R20-5-727;
20. Feasibility study by a member of the American Academy of Actuaries (MAA) or a Fellow of the Casualty Actuarial Society (FCAS) that documents on a pro forma basis the rate structure to set premium levels to cover potential losses and expenses of the pool; and
21. A schedule showing for each member net workers' compensation premiums paid, total losses incurred, and experience modification rates for the 3 preceding years.

R20-5-708. Filing Requirements for Renewal Application for Self-Insurance License

A. A self-insured pool seeking renewal of an authority to self-insure for worker compensation insurance shall file a renewal application 30 days before the existing certificate of authority expires. A pool shall maintain all bonds, policies, and contracts required under this Article while a decision is pending from the Commission on a renewal application. The Commission shall deem a renewal application withdrawn if a pool fails to maintain all bonds, policies, and contracts required under this Article.

B. A renewal application shall meet the following requirements:

1. An application for renewal of authority to self-insure shall be completed on a form approved by the Commission;
2. An application for renewal of authority to self-insure shall be filed with the Division. An application is considered filed when it is received at the office of the Division;
3. An application shall be typewritten or written in ink in legible text;
4. The administrator of a pool shall sign the application. The signature of the administrator shall be notarized; and
5. The administrator shall verify, in writing, that the information contained in and submitted with the application is true and correct.

C. A self-insured pool shall provide the following information at the time the pool files a renewal application:

1. Updated, completed and signed Option Election Form;
2. Continuation certificate for the guaranty bond or letter of credit signed by an authorized representative of the surety or bank in an amount equal to the amount set

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forth in the updated Option Election Form and that meets the requirements of R20-5-713;

3. Confirmation of an excess insurance policies issued by a authorized carrier that meets the requirements of R20-5-715;
 4. Copy of signed service contract that meets the requirements of R20-5-725 designating an approved service company or written statement from the pool requesting authorization to process claims in house that meets the requirements of R20-5-726;
 5. Continuation certificate for the fidelity policy that meets the requirements of R20-5-712;
 6. Statement of any change made in the rates and code classifications utilized by the pool to calculate workers' compensation premiums;
 7. Statement of any change in the calculation method of a premium to each member;
 8. Statement describing the administrative expenses and losses expressed in a dollar amount and as a percentage of the total premiums written by the pool in the preceding fiscal year;
 9. Copy of the current contract or agreement of hire between the pool and administrator; and
 10. Copy of the current delegation agreement between the board of trustees and administrator, if applicable, under R20-5-719(C).
- D.** No later than 120 days after the end of a pool's fiscal year, a pool shall file with the Division a copy of the pool's most recent audited annual financial statement and a copy of the pool's most recent actuarial review of losses, reserves, and incurred but not reported claims, for all known claims.
- E.** The Commission shall deem a renewal application complete when a pool provides the information required under subsections C and D.
- F.** A pool that fails to file a renewal application shall provide the Commission proof of workers' compensation coverage for each of its members by an insurance carrier authorized by the Arizona Department of Insurance to write workers' compensation insurance in Arizona no later than 10 days after the pool's certificate of authority expires.
- G.** A pool that has filed a renewal application that the Commission has deemed withdrawn shall provide proof of workers' compensation coverage for each of its members by an insurance carrier authorized by the Arizona Department of Insurance to write workers' compensation insurance in Arizona no later than 10 days after the date the Commission deems the application withdrawn.

R20-5-709. Combined Net Worth

A pool shall ensure that the combined net worth of its members is at least 1 million dollars at the time the pool files an initial application for authority to self-insure.

R20-5-710. Similar Industry Requirement

The Commission shall consider the following in determining whether 2 or more employers meet the similar industry requirement of A.R.S. § 23-961.01:

1. Two-digit standard industrial classification code established by the 1987 *Standard Industrial Classification Manual* assigned to an employer applying for membership in the pool; and
2. Other information describing or concerning the business of an employer applying for membership in the pool. The Commission may solicit additional written or oral information from a pool or others to assist the Commission

in determining whether 2 or more employers are engaged in a similar industry.

R20-5-711. Joint and Several Liability of Members

- A.** The joint and several liability provision described under A.R.S. § 23-961.01(E) shall include the following meaning:
1. Liability of members. Each member is liable for its own industrial claims or losses incurred during the member's period of membership in the pool to the extent that the pool does not pay the claims or losses. A member's liability for its own claims or losses continues for the life of the claims and continues notwithstanding the pool's inability to process or pay the member's claims or losses. Failure of the pool to comply with the provisions of the Arizona Workers' Compensation Act relating to payment and processing of claims shall result in the assignment of the claims to the State Compensation Fund under A.R.S. § 23-966 and shall not relieve a member of liability for its own losses or claims. In the event that claims are assigned to the State Compensation Fund under A.R.S. § 23-966, the Industrial Commission shall have a right of reimbursement against the member for the amount paid by the State Compensation Fund for the member's own claims and losses, including costs, necessary expenses and reasonable attorney's fees, to the extent that such claims and losses are not covered by the pool's bonds or assets.
 2. Liability of a pool. The pool shall pay all claims for which each member incurs liability during each member's period of membership. The pool shall defend, in the name of and on behalf of any member, any action or other proceeding which may arise or be instituted against a member as a result of injury or death covered by the Arizona Workers' Compensation Act and accompanying rules. The pool shall pay all legal costs and all expenses incurred for investigation, negotiation or defense related to such action or proceeding. The pool shall also pay all judgments or awards, all interest due and accruing after a judgment.
- B.** The joint and several liability clause required under A.R.S. § 23-961.01 to be included in each agreement or contract to establish a pool shall include the language set forth in subsection (A)(1) and (A)(2).
- C.** The joint and several liability clause required under A.R.S. § 23-961.01(E) applies to any agreement used to form a pool on a cooperative or contract basis, through a joint formation of a nonprofit corporation, or by the execution of a trust agreement.
- D.** A pool shall ensure that all members read, understand, and agree, in writing, to the joint and several clause required under A.R.S. § 23-961.01 and described in subsection A.
- E.** Failure to comply with the requirements of A.R.S. § 23-961.01(E) and this Section is cause for revocation of the authority to self-insure.

R20-5-712. Fidelity Policy

- A.** A pool shall obtain and maintain during all periods of self-insurance a fidelity policy to protect the pool from unlawful actions of the following:
1. Individuals appointed to the pool's board of trustees, individually and collectively;
 2. Administrator of the pool; and
 3. Employees of the pool.
- B.** The amount of the fidelity policy described in subsection A shall be at least \$1 million and sufficient to protect members of the pool from damages resulting from misrepresentation or

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misuse of any moneys or securities owned, controlled, or managed by the board, administrator or employees of the pool.

- C. The pool shall provide the Commission proof of the fidelity policy as required under R20-5-707 and R20-5-708.

R20-5-713. Guaranty Bond

- A. A pool shall obtain and maintain during all periods of self-insurance a guaranty bond equal to the greater of either the following:
1. 125% of the total outstanding accrued liability as reflected in the option election form described in subsection B; or
 2. \$200,000.
- B. A pool shall complete and sign an option election form when an initial or renewal application is filed to determine the amount of the bond or securities required to cover the pool's losses. A pool shall ensure that the information contained in the option election form is in agreement with the data provided in the actuarial report. A guaranty bond or continuation certificate for the guarantee bond shall be in the amount established in the option election form.
- C. A guaranty bond or continuation certificate for the guarantee bond filed with the Commission shall bear the effective date of the certificate of authority under which the pool is authorized to act self-insured and shall be valid for a period of 1 year, subject to annual renewal that shall be in the amount established in the option election form filed with a renewal application.
- D. A guaranty bond or continuation certificate for the guarantee bond shall be issued by an insurance carrier authorized by the Arizona Department of Insurance to transact fidelity and surety insurance in Arizona. The guaranty bond and continuation certificate shall be executed by a duly authorized agent of a surety, as evidenced by a certified power of attorney, and countersigned by a licensed resident agent.
- E. In lieu of posting a guaranty bond, a pool may either deposit with the Commission for transmittal to the Arizona State Treasurer, bonds of the United States or other securities. The amount of the bond or securities shall bear a face value equal to the requirements of subsections A and B.
- F. In lieu of posting a guaranty bond, a pool may obtain a letter of credit. The amount of the letter of credit shall be equal to the requirements of subsections A and B.
- G. The Commission shall not accept certificates of deposit in lieu of a guaranty bond, securities, or letter of credit.

R20-5-714. Securities deposited with the Arizona State Treasurer

- A. Any securities deposited with Arizona State Treasurer under R20-5-713(E) shall be registered as follows: "The Industrial Commission of Arizona, in trust for the fulfillment by (name of pool), of (name of pool's) obligations under the Arizona Workers' Compensation Act."
- B. The securities shall be held by the State Treasurer, as custodian, subject to the order of and in trust for, the Industrial Commission of Arizona.
- C. The Commission shall have the following powers with regard to securities held by the State Treasurer:
1. To collect or order the collection of the securities as they become due;
 2. To sell or order the sale of the securities, or any part of the securities; and
 3. To apply or order the application of the proceeds of the sale of securities, to the payment of any award rendered against the pool in the event of a default in the payment

of a pool's obligations under the Arizona Workers' Compensation Act.

- D. The Commission shall remit, upon request from a pool that has deposited securities for transmittal to the State Treasurer, interest coupons on securities as they mature.

R20-5-715. Aggregate and Specific Excess Insurance Policies

- A. A pool shall maintain aggregate and specific excess insurance policies during all periods of self-insurance.
- B. The Commission shall not consider policies of aggregate and specific excess insurance when determining a pool's ability to fulfill its financial obligations under the Arizona Workers' Compensation Act, unless the policies are issued by a casualty insurance company authorized by the Arizona Department of Insurance to transact business in Arizona.
- C. A person seeking to cancel or refuse renewal of aggregate and specific excess insurance policies shall provide 90 days written notice of the proposed cancellation or non-renewal to the other party to the policies and to the Commission. The written notice shall be by registered or certified mail. Failure to provide notice as required by this Section precludes cancellation or non-renewal of the policies.
- D. Policy and Retention Amounts.
1. Policy and retention amounts for specific and aggregate excess insurance for a pool shall be as follows:
 - a. Maximum retention for specific excess instance shall not exceed \$250,000. Specific excess insurance shall be provided to its statutory limit; and
 - b. Maximum retention of aggregate excess insurance shall not exceed 110% of collected premiums. Total aggregate insurance coverage shall not be less than \$5,000,000.
 2. Aggregate and specific excess insurance policies shall state that payments of workers' compensation benefits on a claim made by a member employer, pool, or surety under a bond or through the use of other approved securities shall be applied toward reaching the retention level in the policy.

R20-5-716. Rates and Code Classifications; Penalty Rate

- A. A pool shall only use rates and code classifications obtained from a rating organization approved by the Arizona Department of Insurance.
- B. A pool may apply a penalty rate in excess of an annual premium to any member with an unfavorable loss experience, provided the pool provides written notice to the member 30 days before the effective date of the change in rate.

R20-5-717. Gross Annual Premium of Pool; Calculation and Payment of Workers' Compensation Premiums; Discounts; Refunds

- A. The gross annual workers' compensation premium for a pool shall be sufficient to fund the administrative expenses and loss fund of the pool.
- B. A pool shall calculate a workers' compensation premium and experience modification rate for a member based upon formulas determined by a rating organization approved by the Arizona Department of Insurance for calculation of premiums and experience modification rates by a worker compensation insurance carrier.
- C. Each member shall pay to a pool the premium due in equal monthly or quarterly payments for the premium year, except that upon admission into a pool, a new member shall pay no later than 5 days after the effective date of membership not less than 25% of the annual premium calculated for the new member. The remaining premium due after a new member

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has advanced 25% of the annual premium shall be paid in equal monthly or quarterly payments for the premium year. A pool shall permit a member to pay a premium in advance of the monthly or quarterly schedule.

D. Deviations from rates.

1. A pool shall not deviate from established workers' compensation rates unless the pool complies with the following:
 - a. The deviation is based upon the expense and loss experience of the pool.
 - b. The deviation is supported and justified by an actuary's feasibility study, and
 - c. The pool provides the information required under this subsection to the Division and receives approval from the Division.
2. The Division shall approve the deviation if the deviation is based upon the expense and loss experience of a pool and is justified in an actuary's feasibility study.

E. Refunds. A pool may declare a refund of surplus money, including excess investment income, to its members under the following conditions:

1. There exists surplus money, including excess investment money, for a fiscal year in excess of the amount necessary to meet all financial obligations for the fiscal year, including financial obligations arising from incurred but not reported claims;
2. Total assets of a pool are greater than total liabilities for each fiscal year;
3. An actuary has approved the amount of the refund;
4. The amount of refund is a fixed liability of the pool at the time the refund is declared; and
5. The board sets a date for the refund that shall not be less than 12 months after the end of the fiscal year in which the excess was reported.

R20-5-718. Financial Statements

- A.** A pool shall ensure that a financial statement is prepared annually at the end of its fiscal year by a certified public accountant who has experience in auditing insurance carriers or self-insured pools. The financial statement shall be accompanied by an actuarial report regarding reserves for claims and associated expenses, and claims incurred, but not reported.
- B.** A pool shall ensure that reported reserves in a financial statement are established based on 110% of an actuary's best estimate.
- C.** A pool shall ensure that an actuarial opinion is rendered by an actuary that is a member of the Academy of Actuaries (MAA) or a fellow of the Casualty Actuarial Society (FCAS).
- D.** A pool shall ensure that the pool's annual financial statement described in subsection (A) is audited by a certified public accountant, which audit shall include:
 1. An evaluation and statement from the certified public accountant whether invested surplus money was invested in compliance with R20-5-724;
 2. A description of how the pool operates; and
 3. A statement whether the pool complied with statutes and rules governing self-insured workers' compensation pools as it relates to financial matters.
- E.** Upon request by the Commission or within 120 days after a pool's fiscal year ends, a pool shall file its annual financial statement with the Commission. If a pool stops providing coverage on an ongoing basis or fails to file a renewal application for authorization to self-insure, then the pool shall pro-

vide its annual financial statement within 120 days after the pool's fiscal year ends.

R20-5-719. Board of Trustees

- A.** A pool shall be managed by a board of trustees consisting of at least 5 individuals elected for a stated term of office. At least 2/3 of a board shall be from the membership of the pool.
- B.** Minimum duties and responsibilities of a board. In addition to those duties and responsibilities provided by law, the duties of a board shall include:
 1. Responsibility for all operations of a pool;
 2. Ensuring compliance with this Article and the applicable provisions of the Arizona Workers' Compensation Act;
 3. Hiring of an administrator to manage the daily operations of a pool;
 4. Reviewing and taking action on applications for membership into a pool;
 5. Contracting with a service company or seeking authorization from the Commission to process workers' compensation claims in-house;
 6. Determining the premium to be charged to a member;
 7. Investing surplus moneys in compliance with this Article and other applicable law;
 8. Enacting procedures that limit disbursement of money to payment and expenses associated with claims processing and administrative expenses necessary to conduct the operations of the pool;
 9. Ensuring that the pool complies with statutory accounting principles (SAP) and provides accurate financial information to enable complete and accurate preparation of financial reports;
 10. Maintaining all records and documents relating to the formation and ongoing operations of the pool; and
 11. Ensuring that accounts and records of the pool are audited as required under this Article.
- C.** Delegation of board duties to administrator.
 1. Except as otherwise prohibited by law, a board may delegate to an administrator the duties the board determines proper.
 2. Delegation of duties from a board to an administrator shall be in writing. A copy of the delegation agreement shall be provided to the Commission with each renewal application.
- D.** Board prohibitions. A board or board trustee shall not commit or perform the following acts:
 1. Extend credit to members for payment of a premium;
 2. Utilize money collected as premiums for a purpose unauthorized by this Article;
 3. Borrow money from a pool or in the name of a pool without providing written notice to the Commission of the nature and purpose of the loan; and
 4. Approve admission into a pool an employer who has a negative net worth and whose admission would impair the ability of the pool to meet its financial obligations under the Arizona Workers' Compensation Act.

R20-5-720. Administrator; Prohibitions; Disclosure of Interest

- A.** An administrator of a pool shall not be a member of a board of trustees of a workers' compensation pool.
- B.** An administrator shall not commit any of the acts described in R20-5-719(D).
- C.** An administrator shall disclose to a board any actual or perceived employment or financial interest that the administrator or administrator's family has in any potential provider of ser-

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vices or insurance coverage to the pool. The administrator shall disclose the interest before a contract or agreement is reached with the company or business providing the service or coverage. If a pool has an existing contract or agreement in which a prospective administrator or administrator's family has an actual or perceived employment or financial interest, the administrator shall disclose the interest before accepting a position as administrator for the pool. It is the responsibility of a board to identify for a prospective administrator current providers of services and coverage to the pool.

R20-5-721. Admission of Employers into an Existing Workers' Compensation Pool

- A.** An employer that meets the requirements of A.R.S. § 23-961.01 and this Article that seeks to join an existing pool shall submit an application for membership to the board of trustees of the pool, or its designee, on a form approved by the Commission.
- B.** Consideration of application by a board.
1. A board shall approve or deny admission in the pool according to the bylaws of the pool.
 2. Upon approval of admission of an employer by a board, the board shall transmit the original application of the employer and board resolution approving membership to the Commission for consideration and approval.
- C.** Commission Approval.
1. Except as provided in subsection (C)(2), within 7 days after receiving an employer application described in subsection (B)(2), the Division shall advise the pool whether the employer application is deemed complete. Within 45 days after receiving a complete employer application described in subsection (B)(2), the Commission shall consider the application and shall approve the admission of an employer into a pool if each of the following requirements are met:
 - a. The employer meets the requirements of A.R.S. § 23-961.01 and this Article;
 - b. Admission of the employer into the pool does not impair the ability of the pool to meet the requirements of A.R.S. § 23-961.01 and this Article;
 - c. Admission of the employer into the pool does not impair the ability of the pool to meet its financial obligations under the Arizona Workers' Compensation Act.
 2. After a pool has completed 1 year of operation, the pool may request Commission authorization to admit new members without Commission approval. Within 30 days after receiving such a request, the Commission shall consider and approve the request to add members to a pool without Commission approval if the pool meets the following:
 - a. The pool uses the similar industry requirement set forth in R20-5-710 and provides a list or description of businesses that the pool will consider as being similar; and
 - b. The pool adopts as its own criteria for admission of new employers the criteria set forth in subsection (C)(1) and provides financial standards that the pool shall apply to employers seeking admission into the pool.
 3. The Commission shall issue written findings and an order either approving or denying admission of an employer into a pool under subsection (C)(1) or approving or denying authorization to add members without Commission approval under subsection (C)(2). The Commission shall serve the findings and order upon the

interested parties. The written findings and order is final unless a party files a request for hearing with the Administration Division within 10 days after the findings and order is issued. Hearing rights and procedure are governed by R20-5-736, R20-5-737, and R20-5-738.

- D.** Admission of an employer under subsection (C)(2).
1. A pool shall require an employer applying for membership in the pool to provide a financial report that is either a certified audited financial statement or an internally reviewed and signed financial statement certified by an officer or representative of the business applying for membership.
 2. If a pool approves admission of a new employer into the pool, the pool shall send written notice to the Commission, on a form approved by the Commission, within 10 days and prior to the effective date of membership, confirming that the pool has admitted a new member.
 3. In addition to the notice required under subsection (D)(2), the pool shall also provide to the Commission, the resolution approving membership and a copy of the employer's application for admission into the pool.

R20-5-722. Termination by a Member in a Pool; Cancellation of Membership by a Pool; Final Accounting

- A.** A member of a pool may terminate its participation in the pool or submit to cancellation by a pool under the bylaws of the pool.
- B.** A pool shall provide the Commission written notice of a member's intent to terminate or a pool's intent to cancel a member's participation in the pool at least 30 days before the termination or cancellation takes place on a form approved by the Commission.
- C.** A pool shall provide a final accounting and settlement of the obligations of or refunds to a terminated or canceled member when all incurred claims are concluded, settled, or paid.

R20-5-723. Trustee Fund; Loss Fund

- A.** A pool shall maintain a trustee fund and a loss fund.
- B.** Trustee fund.
1. All premiums and assessments charged to members of a pool shall be paid to the trustee fund which fund shall be placed in a designated depository in Arizona.
 2. A pool shall create a loss fund from the trustee fund.
 3. A pool shall pay administrative expenses of the pool from the trustee fund.
 4. Money from the trustee fund shall be transferred to the loss fund as needed to enable a pool to pay from the loss fund cash needs related to liabilities imposed or arising under the Arizona Workers' Compensation Act.
- C.** Loss fund.
1. A pool shall place its loss fund in a designated depository in Arizona.
 2. A pool shall pay all workers' compensation expenses from the loss fund.
 3. A loss fund shall be maintained at all times by an authorized service company or administrator charged with processing and paying workers' compensation claims.
 4. A pool shall ensure that its loss fund is financially able to cover current cash needs related to liabilities imposed or arising under the Arizona Workers' Compensation Act.

R20-5-724. Investment Activity of a Pool

A pool may invest surplus money not needed for immediate cash needs under the following conditions:

1. Investments are limited to:
 - a. United States Government bonds;

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- b. United States Treasury notes;
- c. Municipal and corporate bonds described under subsections (A)(2), (A)(3), and (A)(4);
- d. Certificates of deposit;
- e. Savings accounts in state banks that are federally insured; and
- f. Common or preferred stock.
- 2. Corporate and municipal bonds are restricted to the top 3 major investment grades as determined by 2 financial rating services.
- 3. Not more than 5% of a corporate municipal bond portfolio is invested in any 1 corporation or municipality.
- 4. Not more than 30% of the market value of a portfolio is in corporate and municipal bonds.
- 5. Not more than 20% of the market value of an investment portfolio is in common and preferred stocks.
- 6. Not more than 5% of a common and preferred stock portfolio is invested in any 1 corporation.

R20-5-725. Service Companies; Qualifications; Contracts; Transfer of Claims

- A. A pool shall obtain the services of a service company to process the pool's workers' compensation claims unless the pool obtains permission to process its own workers' compensation claims from the Commission under R20-5-726.
- B. Qualifications of a service company.
 - 1. A service company shall have satisfactory facilities and equipment to manage, process, and store workers' compensation claims;
 - 2. If otherwise required by law, a service company shall ensure that a licensed claims adjuster processes all workers' compensation claims. If a licensed claims adjuster is not otherwise required by law to process claims, then the service company shall ensure that workers' compensation claims are processed by persons with experience, training, and knowledge of the following:
 - a. Processing of Arizona workers' compensation claims; and
 - b. Arizona Worker's Compensation Act.
 - 3. Service company personnel processing workers' compensation claims have attended and completed training provided by the Commission Claims Division.
- C. A service company shall process and pay each worker's compensation claim in compliance with the Arizona Workers' Compensation Act and accompanying rules. A contract between a pool and service company shall include this requirement.
- D. Transfer of claims from 1 service company to another service company.
 - 1. The transfer of claims from 1 service company to another service company shall be handled in an orderly fashion that does not interfere with or interrupt the processing of a worker's compensation claim.
 - 2. A service company transferring a worker's compensation claim shall communicate to the new service company the historical claims processing activity associated with the worker's compensation claim, and shall provide an original or copy of every document required for continued processing of the worker's compensation claim.
 - 3. A pool shall immediately provide written notice to the Industrial Commission Claims Division of any transfer of a worker's compensation claim from 1 service company to another.

R20-5-726. Processing of Workers' Compensation Claims

by a Pool

- A. The Commission shall permit a pool to process its own workers' compensation claims if the pool provides information and supporting documentation establishing the following:
 - 1. The pool has satisfactory facilities and equipment to manage, process, and store its own workers' compensation claims;
 - 2. If otherwise required by law, a pool shall ensure that a licensed claims adjuster processes all workers' compensation claims. If a licensed claims adjuster is not otherwise required by law to process claims, then the pool shall ensure that workers' compensation claims are processed by persons with experience, training, and knowledge of the following:
 - a. Processing of Arizona workers' compensation claims; and
 - b. Arizona Workers' Compensation Act;
 - 3. Pool personnel processing workers' compensation claims have attended and completed training provided by the Commission Claims Division.
- B. A pool shall pay and process workers' compensation claims in compliance with the Arizona Workers' Compensation Act and accompanying rules.

R20-5-727. Loss Control and Underwriting Programs

- A. A pool shall maintain during all periods of self-insurance a loss control program that includes, at a minimum, written safety requirements and training programs for all employees of members.
- B. A pool shall maintain during all periods of self-insurance an underwriting program that enables the pool to calculate and determine workers' compensation premiums due and to discharge the pool's responsibilities under the Arizona Workers' Compensation Act and this Article.
- C. A pool shall ensure those persons with education, experience, or training in loss control administer its loss control program.
- D. A pool shall ensure those persons with education, experience, or training in underwriting administer its underwriting program.
- E. A pool shall maintain satisfactory facilities and equipment to implement its loss control and underwriting programs.

R20-5-728. Insufficient Assets or Funds of a Pool; Plans of Abatement; Notice of Bankruptcy

- A. A pool shall immediately provide written notice to the Commission if collected premiums and earned investment income for a fiscal year are insufficient to pay benefits under the Arizona Workers' Compensation Act for all reported workers' compensation claims and expenses for the year. When a pool provides notice to the Commission of the deficiency, the pool shall also provide a written proposal to achieve 100% funding which proposal may include the following:
 - 1. Use of premiums collected in other fiscal years, but not necessary for payment of claims or expenses in the year collected;
 - 2. Use of investment earnings associated with other fiscal years, but not necessary for payment of claims or expenses in the year in which associated; and
 - 3. Assessment of members.
- B. The Commission shall review the proposal submitted under subsection A and approve the proposal within 10 days if the Commission determines that the proposal will abate the deficiency. A pool shall implement the plan no later than 30 days after the date the Commission approves the plan and shall achieve 100% funding within 1 year after the date the Com-

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mission approves the plan. Failure to implement the plan is cause for revocation under R20-5-739.

- C. If as a result of an audit or examination by either a pool or the Commission, it appears that the assets of a pool are insufficient to enable the pool to discharge the pool's responsibilities under the Arizona Workers' Compensation Act and this Article, the Commission shall notify the administrator and the board of the deficiency and issue an order to abate the deficiency.
- D. The Commission has authority to include in its order of abatement issued under subsection (C) a provision that a pool shall not add new members to the pool until the deficiency is abated.
- E. Failure to comply with an order of abatement within 60 days after the order is issued constitutes cause for revocation under R20-5-739.
- F. A pool shall provide immediate written notice to the Commission of any bankruptcy filing by the pool.

R20-5-729. Arizona Office; Recordkeeping; Records Available for Review

- A. A pool shall maintain an office in Arizona.
- B. A pool shall ensure that all financial reports and minutes are signed by an authorized representative of the pool.
- C. A pool shall make board meeting minutes, reports or other documents concerning payroll, audits, investments, experience rating, or other information concerning the pool available to the Commission upon request.
- D. A pool shall retain records relating to the formation and operation of the pool. The pool's current board shall know the location of the records at all times.
- E. Records of a pool are the property of the pool. If records of a pool are in the control or custody of a 3rd party, the 3rd party shall immediately surrender the records to a pool, upon request by the pool.

R20-5-730. Order for Additional Financial Information; Examination of Accounts and Records by Commission

If the Commission questions a pool's financial ability to pay workers' compensation claims under the Arizona Workers' Compensation Act, the Commission may order the pool to provide additional financial information from the pool's auditor or may order an independent financial examination of the pool.

R20-5-731. Assignment of Claims Under A.R.S. § 23-966; Obligation of Member to Reimburse the Commission

The Commission shall assign all workers' compensation claims of a pool to the State Compensation Fund under A.R.S. § 23-966 in the event that a pool files for bankruptcy or a pool is unable to process or pay benefits as required under the Arizona Workers' Compensation Act. In the event that the Commission assigns workers' compensation claims to the State Compensation Fund under A.R.S. § 23-966, the Commission shall have a right of reimbursement against any member of a pool for the amount paid by the State Compensation Fund for the member's claims and losses, including reasonable administrative costs, to the extent that such claims and losses are not covered by the pool's bonds or assets.

R20-5-732. Calculation and Payment of Taxes under A.R.S. § 23-961 and A.R.S. § 23-1065.

- A. Subject to subsection (B), the Commission shall determine the taxes to be paid under A.R.S. § 23-961(G) and A.R.S. § 23-1065(A) by calculating a pool's premiums using 1 of the following insurance plans selected by a pool:
1. Fixed premium plan:
 - a. A plan in which neither losses nor incurred loss reserves are used to calculate a premium;
 - b. A discount is allowed for premium size; and
 - c. The taxable premium is calculated as follows: Payroll x applicable rate - premium discount.
 2. Guaranteed cost plan.
 - a. A plan that provides for a direct relationship, on an annual basis, of the premium for tax purposes and the experience modification rate developed to reflect the loss payments and incurred loss experience of an insured; and
 - b. The taxable premium is calculated as follows: (Payroll x applicable rate x experience modification rate) - premium discount.
 3. Retrospective plan:
 - a. A plan that provides for a relationship between the premium for tax purposes, the experience modification rate developed to reflect the loss payment and incurred loss experience of an insured, and the actual incurred losses for the tax year;
 - b. Plan is calculated annually and premium is not subject to further adjustment during the tax year;
 - c. The net taxable premium is calculated as follows: (payroll x applicable rate x experience modification rate x basic premium factor) + (losses for current year + adjusted losses for premium year x conversion factor) x tax multiplier; and
 - d. The net taxable premium is subject to a maximum and minimum premium level depending on which 1 of the 4 rating insurance option plans specified in the rating system filed by the rating organization is used by the State Compensation Fund under A.R.S. Title 20, Chapter 2, Article 4;
- B. A pool shall not select a retrospective plan unless the pool meets the following criteria:
1. The pool has an annual net taxable premium exceeding \$100,000; and
 2. The pool submits and calculates 4 years of data concerning paid loss determinations and incurred loss reserved for each workers' compensation claim which information shall be used to calculate an experience modification factor for the pool. The oldest 3 years of data is used to calculate the rate and the current year data is used to calculate the tax.
- C. A pool shall submit to the Commission information required on the following forms no later than February 15 of each year:
1. Self-Insured Payroll Report; and
 2. Self-Insured Injury Report.
- D. Payment of quarterly tax.
1. The Commission shall calculate quarterly taxes owed under A.R.S. § 23-961(H) or A.R.S. § 23-1065(A) in 1 of the following ways:
 - a. 25% of the tax calculated for the previous year and adjusted for changes in the tax rate, or
 - b. Calculation based on actual payroll and premiums collected for each quarter.
 2. A pool shall file a completed and signed Self-Insurers' Quarterly Tax Payment Form with each quarterly tax payment.
 3. Quarterly payments are due April 30, July 31, October 31, and January 31, for the periods ending March 31, June 31, September 30, and December 31, respectively.
 4. Quarterly tax payments may be adjusted because of changes in the annual tax rate.
- E. After receipt of the information required under A.R.S. § 23-961 and this Article, the Commission shall determine the

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annual taxes owed by a pool. The Commission shall also determine whether the pool has underpaid or overpaid the annual taxes required to be paid by the pool. If the quarterly tax payments paid by a pool are less than the actual tax calculated for the year, then the pool shall pay the difference on or before March 31 of the calendar year in which the taxes are due. If a pool has overpaid its annual taxes, then the Commission shall refund the amount as described in A.R.S. § 23-961(I). A pool shall pay to the Industrial Commission the pool's annual tax on or before March 31 based on premiums calculated for the preceding calendar year and adjusted for quarterly taxes previously paid.

- F. In addition to the penalty described under A.R.S. § 23-961(J), failure to pay annual or quarterly taxes as required is cause for revocation.

R20-5-733. Review of Initial and Renewal Applications for Authority to Self-insure by the Division

- A. Upon the filing of a completed initial or renewal application for authority to self-insure, the Division shall review the initial or renewal application to determine and verify whether the information contained in and submitted with the initial or renewal application for authorization to self-insure is complete and accurate. The Division shall also review the information provided to determine the following:
1. Whether the pool has met the requirements of A.R.S. § 23-961.01;
 2. Whether the pool has met the requirements of this Article; and
 3. Whether the pool has the ability to process and pay benefits required under the Arizona Workers' Compensation Act. A determination of a pool's financial ability to pay shall include a review of the ratios provided by each member at the time of an initial application and review of the following ratios for a pool at the time of renewal:
 - a. Total cash, receivables, and investments to total assets; and
 - b. Total revenue to total expenditures for loss fund and trustee fund.
- B. The Division shall present the findings of its review described in subsection (A) to the Commission. The Division shall also present its recommendations to the Commission regarding an initial or renewal application.

R20-5-734. Decision by the Commission on Initial or Renewal Applications for Authority to Self-insure

- A. The Commission shall consider the following before granting or denying an initial or renewal application to self-insure:
1. The information submitted by an applicant or pool.
 2. The information and recommendations of the Division, and
 3. The requirements of A.R.S. § 23-961.01 and this Article.
- B. The Commission shall deny an application for authority to self-insure if the Commission finds 1 or more of the following conditions:
1. An applicant or pool does not meet the requirements of A.R.S. § 23-961.01.
 2. An applicant or pool does not meet the requirements of this Article, and
 3. An applicant or pool is unable to process and pay benefits required under the Arizona Workers' Compensation Act.
- C. A decision of the Commission shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a duly noticed public meeting. The

Commission shall issue written findings and an order granting or denying authorization to self-insure.

- D. The Division shall serve a copy of the Commission's written findings and order upon the applicant or pool within 10 days of the date the Commission issues its findings and order.
- E. If the Commission grants authorization to self-insure, then the Division shall prepare a certificate of authority to self-insure. In the case of an initial application, the Commission shall not issue the certificate of authority to self-insure until the applicant deposits with the Commission the required bonds or other securities prior to the effective date stated in the certificate.

R20-5-735. Right to Request a Hearing

- A. An applicant and pool shall have 10 days from the date the Commission serves the findings and order under R20-5-734 to request a hearing.
- B. A request for hearing shall comply with A.R.S. § 23-945 and be signed by an authorized representative of the applicant or pool or the applicant's or pool's legal representative. The applicant or pool shall file the request for hearing with the Division.
- C. The Commission shall deem its findings and order final if a request for hearing is not received by the Division within the time specified in subsection (A).

R20-5-736. Hearing Rights and Procedures

- A. Burden of proof.
1. Except as provided in subsection (A)(2), in all proceedings arising out of this Article, the applicant or pool shall have the burden of proof to establish that it has met the requirements of A.R.S. § 23-901 et seq. and this Article.
 2. In revocation hearings, the Commission shall have the burden of proof to establish that the self-insured has committed the acts described in R20-5-739.
- B. Roles of Chair and Chief Counsel.
1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
 2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission and upon direction of the Chair of the Commission shall issue on behalf of the Commission all notices and subpoenas required under this Section. In the discretion of the Chief Counsel, the Chief Counsel may assign an attorney from the Legal Division of the Commission to represent the Division.
- C. Appearance by a party.
1. Except as otherwise provided by law, the parties may appear on their own behalf or through counsel.
 2. When an attorney appears or intends to appear before the Commission, the attorney shall notify the Commission, in writing, of the attorney's name, address, and telephone number and the name and address of the person on whose behalf the attorney appears.
- D. Filing and service.
1. For purposes of this Section, a document is deemed filed when the Commission receives the document. All documents required to be filed in this Section with the Commission shall be served upon the Chief Counsel of the Industrial Commission and upon all parties to the proceeding.

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2. Except as otherwise provided in A.R.S. § 23-901, et seq. and this Article, service of all documents upon the Commission, applicant or pool shall be by personal service or by mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.

E. Notice of hearing.

1. The Commission shall give the parties at least 20 days notice of hearing.
2. A notice of hearing shall be in writing and mailed to the last known address of the applicant or pool as shown on the record's of the Commission or upon the applicant's or pool's representative if a notice of appearance has been filed by a representative.
3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061(B).

F. Evidence.

1. The civil rules of evidence do not apply to hearings held under this Section.
2. A party may make an opening and closing statement with the permission of the Chair if the Chair determines that the statement will be helpful to a determination of the issues.
3. All witnesses at a hearing shall testify under oath or affirmation.
4. A party may present evidence and conduct cross-examination of witnesses.
5. Documentary evidence may be received into evidence and shall be filed no later than 15 days before the date of the hearing. Upon request or upon direction from the chair of the Commission, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
6. Upon written request by a party or upon direction from the chair of the Commission, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A subpoena shall be requested no later than 10 days before the date of the hearing.
7. Upon written request by a party or upon direction from the chair of the Commission, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proven by them.

- G. Transcript of Proceedings.** Hearings before the Commission shall be stenographically reported or mechanically recorded. Any party desiring a copy of the transcript shall obtain a copy from the court reporter.

R20-5-737. Decision Upon Hearing by Commission

- A.** A decision of the Commission to deny an initial or renewal application shall be based upon the grounds in R20-5-734(B) and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a duly noticed public meeting.
- B.** A decision of the Commission to revoke authority to self-insure shall be based upon the grounds in R20-5-739 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a duly noticed public meeting.
- C.** A decision of the Commission to deny admission of an employer into a pool or deny authorization to add members

without Commission approval shall be based upon the grounds in R20-5-721 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a duly noticed public meeting.

- D.** After a decision is rendered at a duly noticed public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated.

- E.** A Commission decision is final unless an applicant or pool requests review under R20-5-738 within 10 days from the date the written decision is issued.

R20-5-738. Request for Review

- A.** A party may request review of a Commission decision issued under R20-5-737 by filing with the Commission a written request for review no later than 10 days after the written decision is mailed to the parties.
- B.** A request for review shall be based upon 1 or more of the following grounds which have materially affected the rights of a party:
 1. Irregularities in the hearing proceedings or any order or abuse of discretion that deprives a party seeking review of a fair hearing;
 2. Accident or surprise which could not have been prevented by ordinary prudence;
 3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
 5. Bias or prejudice of the Division or Commission; and
 6. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
- C.** A request for review shall state the specific facts and laws in support of the request and shall specify the relief sought by the request.
- D.** The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
- E.** The Commission's decision upon review is final unless an applicant or pool seeks judicial review as provided in A.R.S. § 23-946.

R20-5-739. Revocation of Authority to Self-Insure

- A.** In addition to those specific grounds set forth in this Article, the following constitute grounds for revocation of authority to self-insure for workers' compensation:
 1. Failure to comply with requirements of this Article or applicable requirements of Article 1 of 20 A.A.C. 5;
 2. Failure to comply with applicable requirements of A.R.S. § 23-901 et seq.;
 3. Unless otherwise provided, failure to comply with an order or award of the Commission within 30 days after the order or award becomes final;
 4. An inability to process and pay claims under the Arizona Workers' Compensation Act;
 5. The failure of a pool to provide the Commission the reports and taxes required under this Article; and
 6. The willful misstating of any material fact in an application, report, or statement made to the Commission.
- B.** Upon receipt of information demonstrating that a pool has committed an act described in subsection (A), the Division shall conduct an investigation of the facts of the alleged misconduct. If, upon completion of its investigation, the Division determines that there is sufficient evidence to warrant revocation of a pool's authority to self-insure, then the Division shall present its findings to the Commission.

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- C. The Commission shall consider the findings and recommendation of the Division before revoking a pool's authority to self-insure.
- D. The Commission shall revoke a pool's authority to self-insure if the Commission finds 1 or more of the grounds set forth in subsection A. The Commission shall issue written findings and an order revoking the authority to self-insure and shall serve a copy of the findings and order upon the pool.
- E. A pool shall have 10 days from the date the Commission serves the findings and order described in subsection D to
- request a hearing. The request for hearing shall comply with the requirements of A.R.S. § 23-945.
- F. R20-5-736, R20-5-737, and R20-5-738 govern hearing rights and procedures for revocation hearings.
- G. A pool shall immediately inform each of its members, in writing, of the Commission's order of revocation.